TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1382.

J. W. ALLEN, COMPTROLLER OF THE STATE OF TENNESSEE, APPELLANT,

vs.

PULLMAN'S PALACE CAR COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED OCTOBER 11, 1890.

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1 The Circuit Court of the United States for the Middle District of Tennessee.

PULLMAN'S PALACE CAR COMPANY
vs.
J. W. ALLEN, Comptroller of the State of Tennessee. } No. 2790.

In this cause the following summons was issued:

The President of the United States to the marshal of the middle district of Tennessee, Greeting:

You are hereby commanded to summon J. W. Allen, comptroller of the State of Tennessee, a citizen of said State and a resident of the middle district thereof, if to be found in your district, to be and appear at a circuit court before the judges thereof, at the Federal court-room in Nashville, Tennessee, on the third Monday in October, 1889, to answer the bill of complaint of Pullman's Palace Car Company, a corporation organized under and by virtue of the laws of the State of Illinois, and a citizen of said State, having its chief office and place of business in the city of Chicago, in said State, praying an injunction, etc.

Herein fail not, and have you then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this the 4th day of September, 1889, and of American Independence the one hundred and fourteenth year.

H. M. DOAK, *Clerk.*

Endorsed: Came to hand October 1st, 1889, and executed same day on R. D. Marshal, sheriff; Thomas K. Hobson, deputy sheriff, and J. W. Allen, comptroller of the State of Tennessee, by making contents hereof known to them and by delivering to each of them a copy of this summons, and also by delivering to defendant, Allen, a copy of the bill. This October 1st, 1889. C. B. Harrison, U. S. marshal, by E. R. Campbell, D. marshal.

The following bill was filed:

To the honorable judges of the circuit court of the United States for the middle district of Tennessee, in chancery sitting:

Pullman's Palace Car Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois
2 and a citizen thereof, brings this its bill of complaint against J. W. Allen, comptroller of the State of Tennessee; R. D. Marshall, sheriff, and Thomas K. Hobson, deputy sheriff, respectively, of the county of Davidson, in the said State of Tennessee, all of whom are citizens of the State of Tennessee and residing in the middle district thereof.

And thereupon your orator complains and says that your orator's domicile, place of business, and principal office is in the county of Cook and the State of Illinois, where it is engaged in manu-

facturing and owning sleeping and drawing-room cars and, by contract with railroad companies throughout the United States of America, Canada, and Mexico, furnishing the same for use in operating long, continuous, through connecting lines of railroads extending interstate and between foreign nations; that it retains possession of such cars and receives compensation from persons travelling therein for the use of seats or sleeping berths therein.

That it has no domicile, office, or principal place of business in the State of Tennessee and is not subject to the jurisdiction of Tennessee for the purposes of taxation; that there are certain railroad companies owning and operating long, through, connecting lines of railroads extending from other States and Territories of the United States into and into and through the State of Tennessee, each of said lines also connecting with other railroad lines running through many of the States and Territories of the United States.

That each of such railroad companies is engaged in the business of interstate commerce, and cars running on their lines of railroad pass beyond their lines upon other railroads and so on into and through many other States and Territories of the United States; that for the accommodation, comfort, and convenience of railroad passengers travelling over the lines of said railroad companies for long distances, and especially at night, it was and is necessary that there should be provided upon said railroad lines sleeping cars for the use of said passengers.

3 That certain of said railroad companies did therefore, each of them, prior to the first day of January, 1889, enter into certain separate contracts with your orator, all of which contracts or continuations or renewals thereof are still in force.

That in and by each of said contracts between your orator and said railroad companies your orator agreed to furnish for use in operating the lines of said railroad companies sleeping cars sufficient to meet the requirements of travel upon and over such lines of railroad.

That in and by the terms of each of said contracts your orator reserved the right to retain the possession of and to manage and control the inside of such sleeping cars, and to furnish to passengers the use or accommodation of seats or sleeping berths in such cars, to collect compensation therefor, and to keep the carpets, upholstery, bedding, and all the inside arrangements of such cars in good repair, except repairs and renewals made necessary by casualty or accident, and to furnish one or more employés upon each of said cars, whose duty it shall be to collect fares for the extra accommodation furnished in such sleeping cars from the passengers therein, and to provide for the comfort of such passengers generally, and in each and by each of said contracts said railroad companies agreed to haul said sleeping cars on their respective lines of road and at their own expense to furnish fuel for said cars; to light, wash, and clean the same; to permit your orator to collect its usual charges for the extra accommodations afforded by such sleeping cars, and to place tickets for such accommodations in the hands of the railroad companies' ticket agents at their railroad ticket offices for sale by them without charge

to your orator, the proceeds of such sales, however, to be at the risk and to inure wholly to the benefit of your orator, and that your orator should have possession of said cars; all of which things, together with other provisions of said contracts not material to this case, will more fully appear by reference to said original contracts, now in possession of your orator and ready to be produced as this court shall direct.

4 And your orator attaches to this bill as Exhibit "A" a copy of one of such contracts and avers that all of the other contracts are in substance similar thereto.

Your orator further shows that it has never had any branch office of any kind in the said State of Tennessee, unless the fact that it places its tickets with the agents of said railroad companies constitutes such agents branch offices or establishments of your orator; that your orator has never had any other officers, agents, or employés in Tennessee except conductors and porters, which it furnishes with its cars under said contracts, and one minor agent; that the sleeping cars operated by your orator as aforesaid constitute all the property owned by your orator in Tennessee.

That the cars furnished by your orator and operated as aforesaid upon said lines of railroad under said contracts are all used for transporting passengers from other States into and across Tennessee or from places in the State of Tennessee to places in other States; and some of said cars also transport passengers from points in Tennessee to other points in that State whenever they properly apply for such transportation, but the number of such passengers is very small compared with the number of interstate passengers transported in such cars.

That the sleeping cars so furnished by your orator and used upon the railroad lines aforesaid constitute all the sleeping cars owned and operated by your orator in the State of Tennessee, and that all said cars run into, out of, or across the State of Tennessee, making only such stops as the trains to which they are attached make; that in the case of passengers travelling across Tennessee or from points out of it to points in it their sleeping-car tickets are purchased and paid for before they enter Tennessee, and in the case of passengers travelling from points in Tennessee to other points in that State their tickets are purchased and paid for in Tennessee; that none of said sleeping cars run between points exclusively in Ten-

5 nessee, but all of said cars run interstate—that is, from points outside of the State of Tennessee into or into and through Tennessee, or from points in Tennessee to points out of Tennessee—and that therefore all of said sleeping cars are occupied and used in interstate commerce and are not taxable by the State of Tennessee.

That your orator owns in whole or in part and operates more than one thousand four hundred sleeping cars and drawing-room cars, running into all or nearly all the States and Territories of the United States and into Mexico and Canada; that its headquarters and principal place of business for conducting the operations of all of said cars are in the city of Chicago and county of Cook and State of Illinois; that its principal officers reside there; that its records are

there; that its moneys earned all over the United States, Canada, and Mexico are remitted there as soon as possible in the course of business; that no special cars belonging to it are at all times used in the State of Tennessee, but its sleeping and drawing-room cars are continually changing from road to road to suit the emergencies and demands of business and traffic, and that sleeping cars at one time running in Tennessee are at other times transferred to railroads in other States and Territories of the United States and other sleeping cars belonging to it are used in their places.

That none of said sleeping cars are brought into the State of Tennessee for the purpose of doing a local business or for permanent or continuous use therein, but continually pass in and out of it engaged in interstate commerce, as hereinbefore stated; that such cars therefore have no taxable *situs* in the State of Tennessee, but their *situs* for purposes of taxation is in said county of Cook and State of Illinois, and the business your orator is engaged in is interstate commerce, which cannot be taxed by the State of Tennessee and on account of which no license can be exacted from your orator by said State.

Your orator insists that said sleeping and drawing-room cars were and are engaged only — the business of interstate commerce
6 under the protection of the laws and Constitution of the United States, which confer upon Congress the power "to regulate commerce with foreign nations and among the several States," and that your orator cannot be taxed on account of the business of operating said sleeping cars as aforesaid, and that all taxes and license fees imposed upon your orator, as hereinafter set out, on account of said cars or on account of the business of operating them, in which your orator is engaged, are illegal and void.

That your orator is each year assessed and taxed at its domicile, place of business, and principal office in said county of Cook and State of Illinois upon its tangible property and upon its capital stock, its capital stock representing its real and personal, tangible and intangible, property, including its sleeping and drawing-room cars engaged in interstate commerce and including the cars hereinbefore mentioned as operated upon the lines of railroad in the State of Tennessee.

Your orator further shows that by the general-revenue act of 1889 and 1890 it is provided as follows:

"That the rate of taxation on the following privileges shall be as follows: Sleeping-car companies (in lieu of all other taxes except ad valorem tax).—Each company doing business in this State, for one or more passengers taken up at one point in this State and delivered at another point in this State and transported wholly within this State, per annum, $3,000.00."

That by other provisions of this act it is declared a misdemeanor for any person or corporation to engage in or carry on any of the businesses so declared to be privileges without having paid such privilege fees and taken out license therefor, and heavy and severe punishments are provided against any person guilty of such misdemeanor.

That said defendants claim that there is now due from your orator under said tax enactment the sum of three thousand dollars, and are now proceeding to collect the same from your orator; that said defendant, Allen, as comptroller as aforesaid, has issued his
7 warrant to said Marshall, as sheriff as aforesaid, commanding him to seize upon and distrain the property of your orator and to sell the same and make therefrom the sum of three thousand dollars, and said Marshall, by said Hobson, his deputy, has, by force, and pretending to act under said warrant, seized upon the sleeping car "Wetumpka," belonging to your orator, and now holds the same in their possession; that said car is reasonably worth $8,000.00; that said Hobson has advertised and threatens to sell said car to satisfy said illegal and pretended tax.

That said sleeping car of your orator when seized was being used by your orator in the carrying on of interstate commerce as aforesaid, and was in use as an instrument of interstate commerce and was in Tennessee only by virtue of such use, and was therefore not liable to be taken in satisfaction of said tax, even if it had been a valid tax.

That the railroad companies over whose lines of road your orator operates cars are common carriers, and are obliged by law to take upon their trains and carry all who properly present themselves for carriage whether they are travelling between points wholly within Tennessee or not; that such passengers, travelling locally in Tennessee, sometimes apply for sleeping-car accommodations in your orator's cars attached to such train, and, if your orator is obliged to receive them on its cars, then the State of Tennessee by such tax act forces your orator to pay such privilege tax and take out such license or to cease carrying on the interstate commerce in which it is now engaged.

That said defendants have demanded said three thousand dollars from your orator, and have declared that they will force your orator to pay the same; that they now threaten to sell said car so seized by them, and your orator believes will do so unless restrained by this honorable court; that said car is very valuable, but will not bring its full value at a forced sale, and your orator fears that it will be sold for a small amount not sufficient to pay said tax, and your orator believes and fears that said defendants, unless restrained by this honorable court, will thereupon proceed to enforce the
8 collection of said tax so illegally claimed by distraining and seizing upon your orator's other cars, and that the proceedings threatened by defendants for the collection of said taxes will greatly harass your orator.

Your orator further shows that all its sleeping cars aforesaid running through the State of Tennessee are attached to through express trains on the roads of the said railroad companies; that prior to their arrival in Tennessee seats and berths have always been sold by your orator to persons travelling from other States into Tennessee; that your orator has at all times contracts with passengers to give them the accommodations furnished by said cars while travelling upon said roads; that unless your orator pays the

taxes so illegally imposed upon it your orator believes and fears that the said defendants will, unless restrained therefrom by this court, sell said car so already levied on, and, if it does not bring enough to satisfy said tax, will levy upon and seize, in order to force from your orator said illegal tax, its sleeping cars while they are in actual use and running attached to said express trains; that thereby the travelling public will be discommoded, the carriage of passengers interstate will be prevented, your orator and said railroad companies may become harassed by many suits by passengers for damages for not furnishing them the accommodations they contracted for; the credit and reputation of your orator for furnishing comfortable accommodations, which credit and reputation are of great value to it and have been established by strict attention to business and at great expense and trouble for many years, will be broken up, and the good will of said business greatly impaired, and thereby your orator will suffer great and irreparable injury.

Your orator alleges and charges that said enactment of 1889, herein set out, is illegal and unconstitutional, because it discriminates against sleeping-car companies, in that it imposes a privilege tax upon sleeping cars only and exempts from such tax railroad companies or individuals owning, using, and operating sleeping cars in said State, and is in violation of section 28, article 2, of
9 the constitution of the State of Tennessee, which provides that "all property shall be taxed according to its value, * * * so that taxes shall be equal and uniform throughout the State."

"No one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value."

Your orator insists that the State of Tennessee has no jurisdiction of the person, property, or business of your orator for purposes of taxation, and that your orator, being engaged in the business of interstate commerce, is exempted from such regulation and taxation by the Constitution of the United States.

Your orator shows that soon after its organization an auxiliary company for the operation of sleeping cars in the Southern States was formed under the laws of the State of Kentucky, and for a period of fifteen years was so engaged, the cars being run under substantially the same contract with the various railroads as now. It had in use within the State of Tennessee thirty-eight cars, and was principally engaged in affording sleeping-car accommodations to travellers through the State and from other States into Tennessee and from Tennessee into other States.

On the 16th day of March, 1887, the Legislature of Tennessee passed an act entitled "An act declaring the mode and manner of taxing sleeping cars," which provided—

"That the running and using of sleeping cars or coaches on railroads in Tennessee, not owned by the railroads upon which they are run and used, is declared to be a privilege, and the companies owning and using or running such cars or coaches are required to report on or before the first day of May of each year to the comp-

troller the number of cars so used by them in this State, and they shall be required to pay to the comptroller by the first of July following fifty dollars for each and every one of said cars used or run over said roads, and if the said privilege tax herein assessed be not paid as aforesaid the comptroller shall enforce the collection
10 of the same by distress warrant."

Under this act the comptroller of the State claimed there was due from the Pullman Company — Southern Car Company, as privilege tax for the operating its cars for the years 1878, 1879, and 1880 an aggregate amount of $5,700.00, which amount, in August, 1881, the company paid under protest, as provided by statute, and immediately sued to recover, as being illegally and wrongfully collected.

On the seventh day of April, 1881, the Legislature passed an act entitled "An act to provide revenue for the State of Tennessee and the counties thereof," which provides that "sleeping-car companies shall pay an annual tax of seventy-five dollars for each coach," and on December 15th, 1883, the State of Tennessee filed its bill in the chancery court of Davidson county, Tennessee, alleging that the company had in the three years enumerated run sixty cars, instead of thirty-eight, within and through its territory, and seeking to recover the excess above the amount paid under protest, as well as the sum of $9,000.00 claimed to be due for the years 1881 and 1882 for sixty cars alleged to have been in use for those years. The defendant removed the suit into the circuit court of the United States for the middle district of Tennessee and then answered the bill, alleging the said tax to be illegal and void, and on appeal to the Supreme Court of the United States both of said decrees were confirmed, the court being of the opinion that the tax was a unit for the privilege of the transit of the passenger and all its accessories, no distinction being made between the right of transit as a branch of commerce between the States and the sleeping and other conveniences appertaining to a transit in the car, the tax being really one of the right of transit, though laid wholly on the owner of the car and the service rendered being a unit, and that the cars were equally vehicles of transit if owned by the railway companies, and, as such vehicles of transit, so far as it engaged in interstate commerce, was not taxable by the State of Tennessee, because prohibited by the Constitution of the United States.

11 Your orator shows that said causes were decided on March 1st, 1886. During the time of the pending of said suits the Legislature did, in fact, pass two revenue laws, one in 1883 and the other in 1885, declaring the running of sleeping cars a privilege, but no attempt was made to collect any tax thereunder from your orator.

In 1887 the Legislature of Tennessee passed another act taxing sleeping-car companies doing business in Tennessee on each car per annum $500.00, the act being designed to reach two cars of your orator supposed by the State authorities to be in use only between the cities of Nashville and Memphis, in that State, but no attempt was ever made to collect such tax from your orator.

Your orator further shows that said tax of $3,000.00 is an unjust, oppressive, and exorbitant tax, even if any such tax could be imposed; that heretofore the State of Tennessee had imposed a tax on sleeping-car companies of fifty dollars per car, expecting to collect that sum on all cars passing through the State and engaged in interstate commerce. Then the State and its officers, believing that two of your orator's cars were still subject to taxation, raised the rate of taxation to five hundred dollars per car, intending thereby to impose on two cars the amount of tax originally intended to be imposed upon many cars, and so to defeat and circumvent the effect of the decisions of the courts of the United States.

That when yonr orator filed its bill of complaint in this court to enjoin collection of said last-mentioned tax the State of Tennessee then passed said tax enactment of 1889, intending thereby to levy a tax on all the business, both local and interstate, done by your orator in Tennessee; that it is practically impossible for your orator to carry on its regular interstate business in Tennessee without being forced also to do a small amount of local business, and that the sum of $3,000.00 would be a grossly heavy tax upon and practically a confiscation of all revenue derived by your orator from
12 local business done by it in Tennessee.

And your orator therefore charges that said privilege tax of three thousand dollars was intended to be and is in fact a tax upon all business done by it in Tennessee, and that it is impossible for it to carry on the interstate commerce in which it is principally engaged without being forced to pay said privilege tax.

And your orator offers to do all that is required of it in equity and good conscience, and to pay to said defendants any and all sums of money that may be found due to them in connection with the matters set forth in this bill as soon as they may be ascertained by final decree herein.

To the end, therefore, that the said defendants may true, full, direct, and perfect answer make to all and singular the premises (but not under oath, oath being expressly waived hereby), and that as fully and particularly as if the same were repeated and they and each of them specifically interrogated in regard thereto, and that pending the final hearing of this cause your honors will grant unto your orator a writ of temporary injunction, issuing out of and under the seal of this honorable court, restraining and enjoining the defendants and each of them and their attorneys, agents, and clerks and servants from selling the sleeping car of your orator seized by them as aforesaid, and from taking any further steps in regard to said car to enforce the collection of said tax, and from issuing any warrant for the collection of said tax, and from collecting said tax or taking or proceeding to enforce the collection thereof, and that upon the final hearing herein such injunction may be made perpetual, and that your orator may have such other, further, and different relief in the premises as the nature of the case may require and to your honors may seem meet—

May it please your honors to grant unto your orator, not only the writ of injunction hereinbefore prayed, but also a writ of subpœna,

directed to the said J. W. Allen, comptroller of Tennessee; R. D. Marshal, sheriff, and Thomas K. Hobson, deputy sheriff, re-
13 spectively, of Davidson county, in the State of Tennessee, therein and thereby commanding them and each of them, on a day and under a certain penalty therein to be limited, personally to be and appear before this honorable court, then and there to answer all and singular the premises, and, further, to stand to and perform and abide such further order and decree herein as to the court shall seem meet; and your orator will ever pray, etc.

PULLMAN'S PALACE CAR COMPANY,
By MARKS & MARKS, *Solicitors.*

WM. BURRY, *Of Counsel.*

STATE OF TENNESSEE, }
Davidson County. }

George Zoeller, being duly sworn, says that he is an agent of Pullman's Palace Car Company; that he has read the foregoing bill of complaint and knows the contents thereof, and that the matters and things therein set forth are true as therein stated.

GEO. ZOELLER.

Subscribed and sworn to before me Sept. 27, 1889.

ROY FITZPATRICK,
[SEAL.] *Notary Public.*

The following exhibit was filed with the foregoing bill:

This indenture, made this 10th day of August, 1882, between the Louisville & Nashville Railroad Company, hereinafter called the railway company, of the one part, and Pullman's Palace Car Company, hereinafter called the Pullman Company, of the other part:

Whereas the Pullman Company is now engaged in the business of manufacturing railway cars known as sleeping cars under certain patents belonging to it, and of hiring the same to railway companies, under contracts for a term of years, to be used and employed on and over the lines of road of the said railway companies, and receiving therefrom income and revenue by the sale to passengers of seats, berths, and accommodations therein;

And whereas the railway company is desirous of availing itself of the use on and over its lines of road of the cars constructed under said patents now the property of the Pullman Company, and also of connections by means of said cars with other lines of railway whereon said cars are now operated by the Pullman Company: Now, this contract witnesseth:

14 First. That the Pullman Company, in consideration of the covenants and agreements of the railway company hereinafter mentioned and to be by it kept and performed, hereby agrees with the railway company that it will furnish sleeping cars to be used by the railway company for the transportation of passengers sufficient to meet the requirements of travel on and over all lines of railway which it now controls or may hereafter control by ownership, lease,

or otherwise; said cars to be satisfactory to and accepted by the general manager or superintendent of the railway company. The cars so furnished shall be in part the cars now operated on the lines of the railway company under its contract with the Pullman Southern Car Company and from time to time such additional cars, properly equipped and acceptable to the railway company, as may be needed to meet the ordinary requirements of travel.

Second. The Pullman Company hereby agrees to furnish, at its own proper cost and expense, one or more employés, as may be needful, upon each of said cars, whose duty shall be to collect fares for the accommodations furnished in said cars, and generally to wait upon passengers therein and provide for their comfort.

Third. The railway company hereby agrees that the general officers of the Pullman Company and the employés named in article second of this agreement shall be entitled to free passage over the lines of the railway company when they are on duty for the Pullman Company.

Fourth. The Pullman Company hereby agrees that the general officers of the railway company shall be entitled to free passes in any of the cars furnished by the Pullman Company under this contract.

Fifth. It is hereby mutually agreed that the said employés of the Pullman Company, named in article second of this contract, shall be governed by and subject to the rules and regulations of the railway company, which are or may be adopted from time to time for the government of its own employés, and in the event of any liability arising against the railway company for personal injury, death, or otherwise of any employé of the Pullman Company it is hereby distinctly understood and agreed that the railway company shall be liable only to the same extent it would be if the person injured was an employé in fact of the railway company, and for all liability in excess thereof shall be indemnified and paid by the Pullman Company.

Sixth. In consideration of the usè of the aforesaid cars the railway company hereby agrees to haul the same on its own line of road and on all roads which it now controls or may hereafter control by ownership, lease, or otherwise, and also on all passenger trains in which it may by virtue of contracts or running arrangements with other roads have the right to use such cars, in such manner as shall in the judgment of the general manager or general superintendent of said railway company be best adapted to accommodate passengers upon the said railways.

And the railway company shall, at its own expense, furnish and apply the necessary lubricating material, provide ice, fuel, and material for lights, and will wash and clean said cars, and, as often as is necessary, will renew and replace links and pins, bell cord and couplings, and couplings for air-brake hose without charge to the Pullman Company.

Seventh. The Pullman Company hereby agrees that it will keep the cars furnished under this contract in good order and repair and will from time to time renew and improve the same

when necessary, at its own expense, and will keep said cars up to the average standard of the best and most approved sleeping cars run on any railroad in the United States which uses an equal number of sleeping cars, excepting repairs and renewals provided for in article sixth of this agreement and such as are made necessary by accident or casualty, it being understood that the railway company shall repair all damage to said cars of every kind occasioned by accident or casualty during the continuance of this contract, except that the Pullman Company assumes all responsibility for any loss or damage occurring to said cars arising from defective heating apparatus or lights furnished by it.

16 And the railway company agrees, as proper compensation for the maintenance of the running gear and bodies of said cars, that it will pay to the Pullman Company the sum of three cents per car per mile for every mile run by said cars upon the road of the railway company or upon the roads of other companies by direction of the officers of the railway company while in service under this contract.

And the railway company hereby agrees at all times, when requested by the Pullman Company, to make promptly such repairs to the cars furnished under this contract as may from time to time become necessary, and to make, without request, such repairs as may be required to insure their safety, rendering bills monthly to the Pullman Company for repairs to cars, and charging for the same only the actual cost of material and labor expended on such repairs, with an addition of ten (10) per cent. to cover general expenses; all settlements and payments for mileage and repairs to be made monthly between said companies.

But it is hereby understood and agreed that whenever the revenue from sales of seats and berths equals an average of seventy-five hundred ($7,500) dollars per car per annum upon the number of cars furnished under this contract, then, while such revenue shall continue, the railway company shall not be required to pay mileage for any cars furnished under this contract, and the Pullman Company shall then bear the expense of all the repairs and improvements to said cars, except such repairs as are rendered necessary by accident or casualty and such as are provided for in article six of this agreement, which shall be made by the railway company, as hereinbefore mentioned.

Eighth. The railway company agrees to furnish the Pullman Company without charge at convenient points room and conveniences for airing and storing bedding.

Ninth. The railway company further agrees that the Pullman Company shall be entitled to collect from each and every person occupying said cars such sums for said occupancy as may be usual on competing lines furnishing equal accommodations, and that such rules and regulations shall be agreed upon mutually by the parties hereto as will most favor the renting of accommodations in said cars.

It is mutually understood that no more room in said sleeping cars shall be let to any person or persons than is usually granted to

passengers by other railroads which use their own sleeping cars unless by assent of the general superintendent of the railway company.

Tenth. The railway company hereby agrees to permit the Pullman Company to place its tickets for seats and berths for sale in such of the railway ticket offices as may be desired by the Pullman Company, and such service shall be performed by and as a part of the general duties of the ticket agents and without charge to the Pullman Company, proceeds of such sales to be at the risk of the Pullman Company.

17 Eleventh. The railway company hereby agrees, except as hereinafter provided, that the Pullman Company shall have the exclusive right for a term of fifteen years from the date hereof to furnish for the use of the railway company sleeping cars on all the passenger trains of the railway company over its entire line of railway and on all roads which it controls or may hereafter control by ownership, lease, or otherwise, and also on all passenger trains on which it may by virtue of contracts or running arrangements with other roads have the right to use such cars, and that it will not contract with any other party to run said class of cars on and over said lines of road during said period of fifteen years:

Provided, that in all cases in which the railway company may desire to co-operate with other railroad companies in forming through lines of sleeping cars the Pullman Company agrees that cars not owned by it may be run over the lines of the railway company when necessary to secure such co-operation; but in all such cases it is agreed that the Pullman Company shall have the right to furnish its *pro rata* of sleeping cars, based upon the mileage of the railway company in said lines; and in all sleeping cars operated in such through lines the Pullman Company shall be entitled to receive all local fares for accommodations therein upon the roads of the railway company and its *pro rata* of through fares, based upon the number of cars furnished by it in said through lines; and it is in like manner agreed that any party holding the right by contract or otherwise to operate sleeping cars upon the road of any particular railroad company forming a portion of the through lines hereinabove referred to shall be entitled to receive all local fares and *pro rata* of through fares for accommodations therein upon the road of such particular railroad company in any of the sleeping cars operated in said through lines.

Twelfth. The Pullman Company, for the consideration aforesaid, hereby guarantees the railway company against all damages of whatsoever kind which may be by the railway company incurred in consequence of any infringement of patent rights in the construction and use of any of said cars which may be used by the Pullman Company upon the lines of the railway company under this agreement, it being the meaning and intent of this article that the Pullman Company shall secure the railway company against all manner of expenditures which may be incurred by it in consequence of any litigation connected with alleged infringements of patent rights for the interior arrangements of said cars, and that the Pullman Company will pay off and discharge all judgments

obtained at any time against the railway company on account of such infringements.

18 Thirteenth. It is mutually agreed between the parties hereto that in case either of said parties shall fail to cleanse or repair, according to the conditions of this agreement, any of said cars, then and in that case, after written notice shall have been given to the defaulting party by the other party of the default complained of, if the said defaulting party shall neglect or refuse so to cleanse or repair said cars within a reasonable time after such notice, the other party shall have the right to cleanse and make or cause to be made all necessary repairs and renewals to said cars, and said defaulting party shall pay to the other party the cost of such portion of the cleansing and repairs as said defaulting party is held to be liable for by the terms of this contract.

Fourteenth. It is mutually agreed between the parties hereto that in case either of said parties shall at any time hereafter fail to keep and perform any of the covenants herein contained to be by them respectively kept and performed, then and in that case, after written notice shall have been given to the defaulting party hereto of the default complained of, if the said defaulting party shall refuse or neglect to make good, keep, and fulfill such unfulfilled covenants and conditions of this agreement, within a reasonable time after such notice, the other party shall be at liberty to declare this contract ended and no longer in force.

Fifteenth. It is mutually agreed between the parties hereto that the railway company shall have the option to determine whether it will provide one-half or a less proportion of all the capital required for furnishing the equipment which may be put upon the road of the railway company under this contract, and, upon the payment of the same to the Pullman Company, become a joint owner with the Pullman Company in the said equipment and receive thereupon one-half, or a less proportion, as the case may be, of all the gains or profits, and bear the same proportion of all the losses arising from the business of operating the said cars furnished under this contract, the Pullman Company to retain the control and management: Provided, that such option shall be exercised, if at all, and notice thereof communicated to the Pullman Company in writing within ten years from the date hereof.

For the purposes of the option hereinbefore last provided it is hereby mutually agreed that the cars now furnished under this contract, together with such additional cars and equipments as may be subsequently assigned to and accepted by the railway company, shall, when the railway company notifies the Pullman Company of its intention to become part owner of said cars and equipments, be appraised by impartial and competent persons—one to be appointed by the railway company and one by the Pullman Company; they two, in case of disagreement, to appoint a third, and the decision of two to be final, and the value fixed by them shall be taken as the value on which the railway company shall pay the one-half, or a less proportion, as the case may be, in purchasing its interest in the

cars and equipments in the event of exercising such option.

19 And in the event of the railway company exercising its option to become a part owner of said cars and equipments it is hereby mutually agreed, for the purpose of ascertaining the profit to be divided between the Pullman Company and the railway company under this contract, that the operating expenses, which shall be held to include maintenance of said sleeping-car equipments, repairs, supplies, and all expenses of administration and superintendence, and all expenses resulting from or in any way connected with the operation of said cars, including judgments or payments for injury to passengers or loss of their property, for which the Pullman Company, as managers, may be responsible, shall be deducted from the gross receipts, and the remainder thereof shall be divided in proportion to ownership in such cars and equipments; settlements to be made monthly.

In witness whereof the railway company hath caused its corporate seal to be attached hereto, attested by its president and secretary, and the Pullman Company hath caused its corporate seal to be attached hereto, in like manner attested by its president and secretary.

Dated the day and year first above written.

THE LOUISVILLE & NASHVILLE R. R. CO.,
By C. C. BALDWIN, *President.*

[SEAL.] W. RANNEY, *Sec'y.*

PULLMAN'S PALACE CAR COMPANY,
By GEORGE M. PULLMAN, *President.*

[SEAL.] A. S. WEINSHEIMER, *Sec'y.*

The bill and Exhibit "A" were endorsed: Filed Sept. 30th, 1890. H. M. Doak, clerk.

The bill also contained the following further endorsement:

To the clerk of the United States circuit court for the middle district of Tennessee:

Issue an injunction as prayed for in the foregoing bill, upon complainant's executing an injunction bond with sufficient surety in the penalty of five thousand dollars, conditioned to satisfy and perform whatever decree may be finally rendered against it in this cause.

Sept. 28th, 1889.

D. M. KEY, *Judge.*

The following bond was filed:

20 Know all men by these presents that we, the Pullman's Palace Car Company and Geo. M. Pullman, of the county of Cook and State of Illinois, are held and firmly bound unto J. W. Allen, comptroller of the State of Tennessee, in the sum of five thou-

sand dollars ($5,000.00), to be paid to the said J. W. Allen, comptroller, — executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, jointly and severally, and our respective heirs and representatives, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this thirtieth day of September, A. D. 1889.

Whereas the above-bounden Pullman's Palace Car Company has filed its bill of complaint in the circuit court of the United States for the middle district of Tennessee against the above-named J. W. Allen and R. D. Marshall, sheriff, and Thos. K. Hobson, deputy, sheriff, of Davidson county, Tennessee, praying, among other things, for an injunction to restrain and enjoin the said Allen, Marshall and Hobson and each of them and their attorneys, agents, clerks, and servants from selling the sleeping car "Wetumpka," the property of the said Pullman's Palace Car Company, and from taking any other steps in regard to said car to enforce collection of said tax and from issuing any warant for the collection of said tax and from collecting said tax or taking any proceedings to enforce the collection thereof;

And whereas the Hon. D. M. Key, the judge of said court, has allowed an injunction for that purpose, according to the prayer of said bill, upon the said Pullman's Palace Car Company giving bond and security as provided by law and as required by the order of said Key granting said injunction:

Now, therefore, the condition of the above obligation is such that if the above-bounden Pullman's Palace Car Company, its executors or administrators or any of them, shall and do well and truly pay or cause to be paid to said J. W. Allen, comptroller, his executors, administrators, or assigns, the said tax of $3,000.00, and also
21 all such costs and damages as shall be awarded against the said complainant in case the said injunction shall be dissolved, then the above obligation to be void; otherwise to be and remain in full force and effect.

PULLMAN'S PALACE CAR COMPANY,
By GEO. M. PULLMAN, *President.*
GEO. M. PULLMAN.

Which bond was endorsed: Filed September 30th, 1889. H. M. Doak, cl'k.

Thereupon the following injunction was issued:

The President of the United States of America to the marshal of the middle district of Tennessee, Greeting:

Whereas Pullman's Palace Car Company, a citizen of the State of Illinois, complainant, has lately exhibited a bill of complaint before the circuit court of the United States for the middle district of Tennessee, at Nashville, in said State, against J. W. Allen, comptroller of the State of Tennessee, and R. D. Marshall, sheriff, and Thomas K. Hobson, deputy sheriff, of Davidson county, State of Tennessee, defendants, praying relief touching the matter therein

mentioned; and whereas by an order of said circuit court, made in said cause on the 28th day of September, 1889, it was ordered that a preliminary injunction should issue under the seal of said court to restrain the said J. W. Allen, comptroller, as aforesaid, and R. D. Marshall and T. K. Hobson, sheriff and deputy sheriff, respectively as aforesaid, and each and every of them, from selling, disposing of, or taking any further steps to sell the palace car "Wetumpka" for the purpose of making the sum of three thousand dollars claimed by said comptroller to be due from Pullman's Palace Car Company, complainant, to the State of Tennessee, and also to restrain them and each and every of them from taking any further steps or issuing any warrant for the collection of said tax:

You are hereby commanded that you make known to them said order, and to each and every one of them, and command them and each and every one of them to desist and refrain from selling the sleeping car "Wetumpka" to enforce collection of said alleged tax, and from taking any other step in regard to said car to enforce collection of said tax and from issuing any warrant for collec-
22 tion of said tax and from collecting or taking any proceeding to enforce the collection thereof, and that they will fail of obedience to said order at their peril; and you will due return make hereof.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this the 30th day of September, A. D. 1889, and of the Independence of the United States the one hundred and fourteenth year.

H. M. DOAK, *Clerk.*

Which writ is endorsed:

Came to hand day issued and executed same day on R. D. Marshall, sheriff, and Thomas K. Hobson, deputy sheriff, at 11 o'clock a. m. and 12 o'clock m., respectively, and on J. W. Allen, comptroller, on October 1st, 1889, by making known to each of the said defendants the contents of this injunction.

C. B. HARRISON,
U. S. Marshal,
By E. R. CAMPBELL, *D. Mar.*

The following answer was filed:

The separate answer of J. W. Allen, comptroller of the State of Tennessee, to the bill of complaint of the Pullman Palace Car Company, filed against him in this honorable court September 30th, 1889.

Saving and reserving all exceptions by way of plea, demurrer, or otherwise to the manifold errors, inaccuracies, and misstatements contained herein, for answer thereto, answering so much and such parts of said bill as respondent is advised is material for him to answer, says:

He admits that complainant has its principal office of business in the county of Cook, State of Illinois, and, so far as he knows, the gen-

eral character of business engaged in by it is correctly stated in its bill of complaint.

Respondent denies that it has no domicile, office, or place of business in the State of Tennessee, but insists that it has numerous offices and agents engaged in the transaction of its business in various parts of the State, and especially that it has such offices and agency in the city of Nashville and county of Davidson.

Respondent also admits that many of the railroad compa-
23 nies operating lines into and across the State of Tennessee and using complainant's sleeping cars are engaged in the transfer of passengers into, through, and across said State; but denies that the entire business transacted by any of said companies is wholly of this character, but, on the contrary, insists that a large amount of business transacted by said carriers is purely local in its nature—that is, it consists in the transfer of passengers from one point to another wholly within the State of Tennessee.

Respondent admits that each of said railroad companies did, prior to 1889, enter into separate contracts with complainant for the running upon their respective lines of road of sleeping cars, and that said contracts, continuations, or renewals are still in force; but respondent denies that the terms of each of said contracts are substantially or accurately set forth in complainant's bill; and respondent further denies that the contract made by complainant with the Louisville & Nashville Railroad Company and filed as Exhibit "A" to its bill is substantially the same contract made by complainant with the other railroad companies engaged in the transaction of business in Tennessee, and respondent here calls upon and demands from complainant the production of the contract entered into between it and the Nashville, Chattanooga & St. Louis railway for the running of sleeping cars over the branch of its road between the cities of Nashville and Memphis, Tennessee.

Respondent further denies that all the cars furnished by complainant and operated upon said lines of railroad are used in transporting passengers from other States into and across the State of Tennessee to places in other States, and insists that certain cars are domiciled entirely within the State of Tennessee, and, as respondent is informed and charges and believes, it has certain cars that are used wholly within said State that receive no passengers outside of the State for points within and through the State, and receive no
passengers within the State for points without, but the sole
24 business done by these cars is exclusively within the limits of this State; that if these cars by name are not domiciled at all times within the State and doing an exclusively State business it is only because they are taken from the State temporarily for repairs or because said cars engaged in transporting passengers between the cities of Memphis and Nashville, Tennessee, are made at other times and upon different occasions to come from without and go beyond the limits of said State merely as a subterfuge and for the purpose of attempting to avoid the liability of complainant for the taxes claimed, the trip or run of these cars being exclusively from the city of Nashville to the city of Memphis, or *vice versa*, both points

being within the State of Tennessee, and at no time is a seat or berth in one of said cars ever engaged or held for a continuous trip from a point within the State to a point beyond its limits, but said cars run and ply between said cities of Nashville and Memphis, whether the same by name or not are in reality the same and are at all times engaged exclusively in carrying passengers wholly within the State and as such are liable for the payment of the tax claimed by said State through its officers.

Respondent admits that the revenue law of 1889 of the State of Tennessee in relation to sleeping cars doing business in this State is correctly quoted by complainant, but denies that it is illegal or unconstitutional and asserts it is a general law applicable to all sleeping-car companies doing business in the State, and that no unjust discrimination is practiced in favor of or against any particular company.

Respondent again expressly denies each and every allegation contained in complainant's bill which charges that all of its cars are engaged in the transaction of interstate commerce and insists that all of its cars are engaged in the transfer of passengers from one point to another within the State of Tennessee, and that certain of its cars are engaged exclusively in the transfer of passengers wholly within the State.

25 Respondent expressly denies that it is necessary or essential for the conveyance of the public or the requirements of business that its cars engaged in the transfer of passengers between the cities of Nashville and Memphis, in this State, should at any time make a continuous trip to other points beyond or without the State, the regular course of business being, as respondent is informed and charges, that the car which leaves Nashville at night runs directly to the city of Memphis and remains there until the following night, when it is again returned to the city of Nashville, and the car which leaves Memphis at night runs directly to the city of Nashville, where it remains until the following night, when it is returned to Memphis; that this constitutes one continuous and complete trip, and that said cars *were* not and in fact do not go to points beyond said State, except occasionally, and then either for the purpose of being repaired or to meet some pressing and unusual emergency, such, for instance, as to attempt to avoid just and wholesome taxation; and now, having fully answered, respondent prays to be hence dismissed with his reasonable costs.

G. W. PICKLE, *Att'y Gen'l.*
W. D. COVINGTON,
CHAMPION, HEAD & BROWN,
Sol'r's for Defendant.

The foregoing answer is endorsed: Filed Feb'y 14th, 1890. H. M. Doak, clerk.

The following replication was filed:

This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says—

That it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in said answer contained material or *in*effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is ready to
26 aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

WM. BURRY,
MARKS & MARKS,
Solicitors for Complainant.

The replication is endorsed: Filed April 16th, 1890. H. M. Doak, cl'k.

The following stipulation was filed:

PULLMAN'S PALACE CAR COMPANY
v.
P. P. PICKARD, Comp'r,

&

PULLMAN'S PALACE CAR COMPANY
v.
J. W. ALLEN, Comp'r.

It is hereby agreed that the above two causes may be heard together, and that depositions and testimony taken in either of them may be used upon the hearing of the other with like effect as if taken therein.

WM. BURRY,
Sol'r for Comp'nt.
CHAMPION & HEAD,
Sol'rs for Def't.

The foregoing stipulation is endorsed: Filed April 21st, 1890. H. M. Doak, clerk.

The following subpœna was issued:

The President of the United States to the marshal of the district of middle Tennessee, Greeting:

You are hereby commanded to summon Truman Kellogg and H. Craik, conductors on sleeping cars between Nashville and Memphis—N., C. & St. L. R. R.—if to be found in your district, personally to be and appear before the judges of the circuit court of the United States for the middle district of Tennessee, in the sixth circuit, at the Federal court-room, in Nashville, on the 21st day of April, 1890, then and there to testify and the truth to speak on behalf of the defendant in a certain matter of controversy in said court depending, wherein Pullman's Palace Car Company is complainant and J.

W. Allen, comptroller of the State of Tennessee, is defendant; and this you will in nowise omit under the penalty of the law.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of the court aforesaid on this the 16th day of April, 1890, and of the Independence of the United States the one hundred and fourteenth year.

——— ———.

27 The foregoing subpœna is endorsed: Executed on the 17th day of April, 1890, by summoning the within-named witnesses, Truman Kellogg and H. Craik, as herein commanded, in Davidson county, two miles from Nashville. W. T. Wright, dep. marshal.

The following deposition was filed:

Caption, certificate, and other formalities waived in the depositions of Hewitt Craik and Truman Kellogg, witnesses for defendant.

HEWITT CRAIK, being first sworn, deposed as follows:

Question 1. State your residence and occupation.

Answer. Residence, Nashville; occupation, Pullman car conductor.

Question 2. Are you engaged on the line of sleepers running between Nashville and Memphis, Tennessee? If so, how long have you been so engaged?

Answer. There is no line between Nashville and Memphis. The line is between Memphis and Atlanta, and No. 525, running via Nashville.

Question 3. Please state the time your cars make—that is, the time of departure and arrival at Memphis, Nashville, and Atlanta.

Answer. We leave Memphis at 9.50 p. m.; reach Nashville at 7 a. m. next morning; lie in Nashville all day; leave at 8.15 p. m. for Atlanta, reaching there at 6.32 a. m. the following morning; lie there all day; returning, leave at 6.10 a. m., reaching Nashville at 5.10 a. m. next morning; lie there all day, leaving at 7.35 p. m., arriving at Memphis at 5.15 a. m. the following morning.

Question 4. Was this schedule in force during the year 1889, and did you operate sleeping cars on this schedule during any portion of that year?

Answer. No, sir.

Question 5. Did you at any time during the year 1889 receive one or more passengers on your car at a point within the State of Tennessee and transport them to another point in this State, they being transported wholly within the limits of this State?

28 Answer. Yes.

HEWITT CRAIK.

Sworn to and subscribed before me this April 21st, 1890.

E. R. CAMPBELL,
Clerk U. S. District Court.

The foregoing deposition is endorsed: Filed April 21st, 1890. H. M. Doak, clerk.

The following commission to take depositions was issued by H. M. Doak, clerk of the circuit court of the United States for the middle district of Tennessee, who is authorized by a rule of court to issue such commissions, on the 21st day of October, 1889, to wit:

The President of the United States of America to E. A. Price, Esq., Greeting:

Know ye that, reposing special trust in your diligence and fidelity, you are by these presents appointed and invested with full power and authority to cause to come before you, at the office of Champion, Head & Brown, on some day to be by you appointed, J. W. Thomas, George Knox, A. H. Robinson, W. W. Knox, W. L. Danley, and M. J. C. Wrenne and examine them upon their corporal oaths upon interrogatories and cross-interrogatories hereunto attached as witnesses on behalf of the defendants in a certain cause depending in the circuit court of the United States for the middle district of Tennessee, wherein Pullman's Palace Car Company is complainant and J. W. Allen, State comptroller of Tennessee, — defendant, said depositions, when taken, to be read as evidence on the part of the defendant on the trial of said cause, and when you have taken their testimony and reduced the same to writing you will return the same, with this commission, closed up under your seal, to the clerk of said circuit court, at Nashville, Tennessee, with all convenient speed.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of our said court, at Nashville, this 21st day of October, 1889, and of American Independence the one hundred and fourteenth year.

H. M. DOAK, *Clerk.*

Then follows the caption:

29 The deposition of J. W. Thomas, witness for the defendant in the above cause, taken upon notice on the 22nd day of October at the office of Champion, Head & Brown, Cole building, Nashville, Tennessee, in the presence of S. A. Champion, attorney for the defendant, no one being present for the complainant.

The said witness, being duly sworn, deposed as follows:

Int. 1. Please state what connection you have with the Nashville, Chattanooga & St. Louis railway, and how long have you filled that position.

Answer. I am president and general manager; have been president five years and general manager nine years.

Int. 2. How many cars does the complainant run over your line and under what contract?

Ans. Four sleepers and two parlor cars. We pay three cents per mile for the sleepers and two and a half cents for the parlor cars.

Int. —. If you know, name the cars that run between Nashville and Memphis.

Ans. Do not remember the names of the cars.

Int. 4. State if it is not the custom of the cars that make the run between Nashville and Memphis to come from Louisville or Atlanta, arriving in Nashville in the morning and remain here until about seven o'clock in the evening and then continue their trip to Memphis.

Ans. The parlor cars run between Nashville and Atlanta, leaving Nashville 7.30 a. m. and Atlanta 6.30 p. m.; leave Atlanta 8 a. m.; arrive at Nashville at 7 p. m. Sleepers leave Atlanta 6 p. m.; reach Nashville at 5 a. m.; lie over until 7.30 p. m., and reach Memphis about 5 a. m.; returning, leave Memphis 10 p. m.; arrive at Nashville 7 a. m.; lie over until 8 p. m.; reach Atlanta 6 a. m.

Int. 5. Please state if tickets are ever sold from Atlanta or intermediate points for points beyond Nashville to be used upon the sleepers arriving at Nashville in the morning.

Ans. I don't know.

Int. 6. Do the sleeping cars leaving Nashville in the evening ever go to points beyond Memphis?

Ans. Very seldom, if ever.

Int. 7. Do the sleeping cars reaching here from Memphis in the morning invariably go to Atlanta in the evening?

Ans. As a general rule they do; there may be occasional exceptions.

Int. 8. Are certain specified cars assigned to the service on your road, or does the complainant exercise its own convenience and make frequent changes?

Ans. Four sleepers are assigned to our road, and they are not changed except for repairs or in case of accident.

Int. 9. How long has the custom above described prevailed? And state if, until recently, two cars or more did not do the entire service between Nashville and Memphis and not go elsewhere.

Ans. I think so, but do not know when the change was made.

Int. 10. From whose office could we get that information?

Ans. The records of the movements of cars are kept in the superintendent's office.

Int. 11. State, if you know, if the change was not made for the purpose of avoiding the privilege tax.

(Objected to by complainant.)

Ans. I think so, but do not know positively.

Int. 12. How many cars were used between Nashville and Memphis before the change was made?

Ans. Two.

Int. 13. The parlor cars running between Nashville and Memphis invariably lie over at Nashville and Memphis during the night, do they not, or was this not the custom before the parlor car was discontinued between Nashville and Memphis?

Ans. No parlor-car line between Nashville and Memphis for some

months past. When the line was run the cars lay over at
31 night at Nashville and Memphis.

Int. 14. State if they did not run alone between Nashville and Memphis and when was the line discontinued.

Ans. I do not know when the line was discontinued. The records of the superintendent's office —. Two cars ran exclusively between Nashville and Memphis.

Int. 15. Is it not true that the sleepers arriving in Nashville in the morning from Atlanta and Memphis could make close connection instead of lying over all day?

Ans. They could do so if the railroads were willing to bear the expense of hauling them on day trains, which we are not willing to do.

And further this deponent sayeth not.

J. W. THOMAS.

Complainant's counsel objects to all of Mr. Thomas' testimony which relates to parlor cars.

The foregoing deposition was taken before me as stated in the caption and reduced to writing by me, and I certify that I am not interested in the cause, nor of kin or counsel to either of the parties; that I sealed *them* up and delivered *them* to the clerk of the United States circuit court at Nashville, Tennessee, without being out of my possession or altered after it was taken.

Given under my hand the 22nd day of October, 1889.

[NOTARIAL SEAL.] EDWIN A. PRICE,
Notary & Special Comm'r.

The following other deposition was filed:

Depositions of W. L. Danley, W. W. Knox, M. J. C. Wrenne, witnesses for the defendant in the above cause, taken upon notice on the 23d and 29th of October, 1889, at the office of Champion, Head and Brown, Cole building, Nashville, Tennessee, in the presence of attorneys for both parties.

Said witnesses, being of lawful age, were first duly sworn and deposed as follows:

W. L. DANLEY, of competent age, being duly sworn, deposed as follows:

32 Int. 1. Please state what position you occupy and how long you have been so engaged.

Ans. I am general passenger agent of the Nashville & Chattanooga Railway Company since September, 1868.

Int. 2. How many sleeping and parlor cars have been used by your company since 1886?

Ans. That is a matter of record in the transportation department, and I could not say.

Int. 3. Assuming that four Pullman sleeping cars ran over your

road, please state when they arrive at Nashville and when take their departure.

Ans. They usually arrive here in the morning between, say, five and seven and a half, and leave between seven and eight fifteen at night.

Int. 4. Why are these cars detained in Nashville during the day?

Ans. They are detained here because we run no sleeping cars over our lines in the day-time, and it is also necessary to clean them which they do here.

Int. 5. Please state if it was not the custom of the company until recently to run two cars between Nashville and Memphis and the cars assigned to this line did not go elsewhere, and, if a change has been made, why was that done.

Ans. During part of the time I think that they had two cars assigned to the Nashville and Memphis line. I don't know about the change.

Int. 5. Who sells the tickets of the complainant over your line?

Ans. By W. W. Knox, ticket agent Union depot, and A. H. Robinson, ticket agent at the Maxwell House.

Int. 6. Is it not true that the change under which these cars running exclusively between Nashville and Memphis were discontinued was made for the purpose of avoiding the payment of the privilege tax assessed by the Legislature?

Ans. All changes which have been made — at the instance of the Pullman Company, and they have never assigned any reason for the changes to me.

33 Int. 7. State, as nearly as you can, about what the gross earnings received by the Pullman Company for local traffic would amount to for the year.

Ans. I have very little idea what their gross earnings are.

And further deponent sayeth not.

W. L. DANLEY.

Counsel for complainant objects to all of Mr. Danley's testimony which relates to parlor cars, and also all his testimony about movements of cars, as he does not appear to speak from his own knowledge of them.

Witness, W. W. Knox, aged 42 years, being duly sworn, deposed as follows:

Int. 1. What position do you occupy and how long have you been thus employed?

Ans. Ticket agent at the Union depot in Nashville; since February, 1884.

Int. 2. Do you, by yourself or through others, sell tickets for the Pullman Palace Car Company; if so, under what sort of contract with the complainant?

Ans. I sell their tickets by instructions from the management of the railroad company.

Int. 3. What compensation, directly or indirectly, does the railroad company get for this service?

Ans. I do not know.

Int. 4. State if tickets are ever sold on the sleeper which goes to Memphis at night for points beyond Memphis.

Ans. No, sir.

Int. 5. Why not?

Ans. The sleeper runs only to Memphis.

Int. 6. Does the same sleeper return to Nashville the next night; if so, are tickets ever sold from that point to points beyond Nashville?

Ans. I do not know.

Int. 7. How many sleepers run between Nashville and Memphis?

34 Ans. One from Nashville to Memphis every night and one arrives at Nashville from Memphis every morning.

Int. 8. Please give the names of the sleepers assigned to the Nashville, Chattanooga & St. Louis railway.

Ans. I do not know.

Int. 9. During what period were certain cars used exclusively between Nashville and Memphis?

Ans. Well, I can't tell, because I don't know to what line the cars are assigned.

Int. 10. Is it not true that until recently two cars belonging to the Pullman Car Company were run exclusively between Nashville and Memphis and no other cars were used for that purpose, except when these were withdrawn for repairs or in case of accident?

Ans. I have understood that such was the case, but do not know of my own knowledge. I keep no records of any kind of the movements of sleeping cars.

Int. 11. If such was the case when, according to the best of your information, was this custom discontinued?

Ans. I can't say of my own knowledge that it is discontinued, because I know nothing about it.

Int. 12. State as near as you can the amount derived from the sale of sleeping-car tickets sold at your office annually to be used between Nashville and Memphis.

Ans. I think between two and three thousand dollars.

Int. 13. The amount between Nashville and Chattanooga?

Ans. Not over one hundred dollars a year.

Int. 14. That is because it goes to Atlanta, is it not?

Ans. Yes, sir.

Int. 15. How many parlor cars are used by the Nashville and Chattanooga road and between what points do they run?

Ans. Two used between Nashville and Atlanta.

Int. 16. How long have these cars been discontinued be-

35 tween Nashville and Memphis?

Ans. I do not know.

And further deponent sayeth not.

W. W. KNOX.

Counsel for complainant objects to all of Mr. Knox's testimony which relates to parlor cars and to all statements made by him concerning matters not within his own knowledge.

Witness, M. J. C. WRENNE, aged forty-two years, being duly sworn, deposed as follows:

Int. 1. How and where are you engaged, and how long have you been engaged in that capacity?

Ans. Superintendent of the Nashville and Chattanooga railway, and have been so engaged since 1880.

Int. 2. What are your duties?

Ans. I have charge of the transportation department.

Int. 3. How many Pullman sleeping and parlor cars are assigned to your road?

Ans. Four sleepers and two parlor cars.

Int. 4. How long have these cars been used by your road?

Ans. The cars we are using now we have had possibly two years or more; we may not have had them so long. I do not remember when we got the parlor cars.

Int. 5. How many cars run between Nashville and Memphis?

Ans. It takes two cars to fill the line between Nashville and Memphis.

Int. 6. State if it is true that until lately two cars ran exclusively between Nashville and Memphis; and, if so, when was that custom commenced and when discontinued.

Ans. For the last fifteen or eighteen months, more or less, two cars were running between Nashville and Memphis, unless replaced by other cars when these cars were in the shop. This was so until about the first of September, when the cars began to run alternate trips to Atlanta and Memphis.

36 Int. 7. State if these cars while thus engaged were not the only sleepers used in that service, except temporarily in case of accident or when withdrawn for repairs.

Ans. These four cars came to us as new cars. Two of them for awhile ran between Nashville and Atlanta, and were then transferred to the Memphis line, or the contrary.

Int. 8. Why were these changes which you mentioned in your last answer made?

Ans. The changes were made by the Pullman people to get the cars in line to suit themselves.

Int. 9. Was there any reason for it known to you?

Ans. The cars came at different times, and the two newest ones were put on the preferred line.

Int. 10. Is it not true that the two cars or some other two cars belonging to the complainant were used exclusively between Memphis and Nashville during the years 1885, 1886, 1887, and 1888? If not, please state from your books just what portion of this period the custom covered.

Ans. Will examine my books and attach my answer as an exhibit to my deposition.

Int. 11. Please explain the difference in the use of the sleeping and parlor cars.

Ans. The sleeping car is fitted up with beds and the parlor car has only chairs in it. The parlor car is used on the day trains, and the sleepers on the night trains.

Int. 12. How long since your first using the parlor cars between Nashville and Memphis?

Ans. About May 12th, 1889.

Int. 13. How many had been used before that time and for what length of time?

Ans. Two; for about a year.

Int. 14. Please examine your books and state the exact time and the dates.

37 Ans. I will do so.

(N. B.—The further taking of this deposition is adjourned until 3 p. m. October 28th, 1889.—Edwin A. Price, comm'r.)

The taking of the deposition of M. J. C. WRENNE was resumed at 10.30 a. m. of October 29th.

Present: Wm. Burry, attorney for complainant, and J. M. Head, for defendant.

Int. 15. How many sleeping cars are necessary to transact the business between Nashville and Memphis?

Ans. Ordinarily two cars, one leaving Nashville and one Memphis each night.

Int. 16. Was this number of sleeping cars used by your road between Nashville and Memphis during the years 1887 and 1888?

Ans. Yes, sir.

Int. 17. Were these cars furnished by the complainant, The Pullman Palace Car Company?

Ans. Yes, sir.

Int. 18. Is it necessary for the convenience of the travelling public that the sleeping cars doing the business between Nashville and Memphis should at any time go outside of the State of Tennessee?

Ans. Not if the cars are in first-class running order.

Int. 19. Give the time that these sleepers left Nashville and Memphis and when they arrived at each of these points during the years 1887 and 1888.

Ans. The sleepers left Nashville between the hours of seven and eight p. m., arriving in Memphis between four and six a. m.

Int. 20. At what time did these sleepers arriving in Nashville and Memphis respectively during the morning leave these points during the years 1887 and 1888?

Ans. The following evening, if to go back over the same line.

Int. 21. During the years 1887 and 1888 were sleeping-car tickets ever sold from Nashville to Memphis or any intermediate point to a point beyond the limits of Tennessee?

38 Ans. I can't answer as to where the tickets are sold to.

Counsel for complainant objects to all of Mr. Wrenne's testimony which in any way relates to parlor cars.

Cross-examined:

1 Cross-int. In answer to interrogatory 16 you stated that two sleeping cars were run between Nashville and Memphis during 1887 and

1888. Did you mean that only two different sleeping cars were run between those points at that time?

Ans. No, sir; I meant that two cars would fill the line and they were liable to be changed by the Pullman Company and were often changed.

Cross-int. 2. Did your company sometimes during that period call upon complainant for extra sleeping cars to meet emergencies or unusual demands of business?

Ans. Yes, sir; when business demanded extra sleepers were asked for, and if the Pullman Company had them they were furnished.

Cross-int. 3. Please state by months the number of different sleeping cars operated each month by complainant over your railroad between Nashville and Memphis during 1887 and 1888.

Ans. I find that in 1887, in January, 8 different cars; February, 9; March, 10; April, 18; May, 11; June, 8; July, 11; August, 13; September, 8; October, 14; November, 9; December, 9. In 1888, in January, 10; February, 9; March, 7; April, 6; May, 11; June, 6; July, 4; August, 5; September, 6; October, 2; November, 2; December, 4.

Cross-int. 4. Please state how many different cars were so used in 1887.

Ans. I find that there were forty-one cars used in 1887.

Cross-int. 5. Please state the number so used in 1888.

Ans. Twenty-six.

Cross-int. 6. You spoke of cars being assigned to your road by the Pullman Company. Do you mean by that the allotment
39 of certain specific cars to your road, which the Pullman Company was not at liberty to change, to suit the emergencies of its business?

Ans. The cars belong to the Pullman Company, and they can change them any time they want to.

Cross-int. 7. Then, by what you said in that regard, you simply meant that the complainant was required to do a certain amount of sleeping-car service on your road, using good equipment therefor, and that you thought a certain number of cars run continuously could do that service?

Ans. Yes; that is the idea.

Cross-int. 8. Does your road extend beyond this State, and to what point?

Ans. The line of the Nashville and Chattanooga road runs from Chattanooga, Tennessee, to Hickman, Kentucky, passing through a portion of the States of Georgia and Alabama between Chattanooga and Nashville.

Cross-int. 9. Does not your road connect with the L. & N. railroad at McKenzie and Nashville, and are not your trains run so as to make connection with the Louisville & Nashville trains at those points, as a general thing?

Ans. Yes; our trains connect with the Louisville & Nashville trains at McKenzie and Nashville.

Cross-int. 10. During 1887 and 1888 were there any through Pull-

man sleeping cars running from Louisville over your road to points in Florida and Georgia?

Ans. We had a line of sleepers running from Louisville to Jacksonville, Florida, during the year 1887.

Cross-int. 11. Have the Pullman Company any shops in Tennessee where they do all necessary repairing to their cars?

Ans. I know of no shops in Tennessee.

Cross-int. 12. Are there any on your line of road?

Ans. No, sir.

40 Cross-int. 13. The contract in evidence between your company and complainant requires complainant to furnish all sleeping cars needed for operations on your road. Does your company, under that contract, require it to operate sleeping cars over that part of your road lying between Nashville and Memphis?

Ans. If the contract exists it is in the hands of the president and general manager, and I am not conversant with its requirements. I understand that the Pullman Company are to furnish sleepers for our night trains between Nashville and Memphis, which they do at our request.

Redirect examination:

Int. 1. I will ask you, Mr. Wrenne, if the sleeping cars operated by your company between Nashville and Memphis could not be discontinued without in any way interfering with the use of sleepers on the remainder of your line of road.

(Objected to as immaterial.)

Ans. There is no connection whatever between the sleepers used between Nashville and Memphis and other parts of the line.

Int. 2. I understand you to say that two sleeping cars were necessary for the transaction of business between Memphis and Nashville during the years 1887 and 1888.

Ans. Yes, sir.

Recross-examined:

Int. 1. Does not the proper operation of your railroad call for the running of sleeping cars between Nashville and Memphis?

Ans. Yes, sir; on night trains.

Int. 2. Did not the cars passing from Memphis during all or almost all of 1887 and 1888 run on to Louisville, Kentucky, before returning to Memphis?

Ans. I don't know if they went to Louisville; they were cars in the Pullman service and might have been in the line leading to Chicago, St. Louis, Cincinnati, New Orleans, or Atlanta.

M. J. C. WRENNE.

41 The foregoing depositions were taken before me as stated in the caption, and were reduced to writing by me and counsel in the cause, and I certify that I am not interested in the cause, and that I am not of kin or counsel to either party to the cause, and that

I delivered them to the clerk of the United States court, at Nashville, without being out of my possession or altered after they were taken.

EDWIN A. PRICE, *Comm'r.*

All formalities as to caption and certificate are hereby waived.

CHAMPION & HEAD,
Att'ys for Def't.

WM. BURRY,
Sol'c'r for Comp'nt.

The foregoing depositions are endorsed: Filed Oct. 30th, 1889. H. M. Doak, clerk.

The following depositions were taken and filed in cause No. 2777 and read by agreement in this cause (which agreement is a part of this record, *ante*, page 26), to wit:

UNITED STATES OF AMERICA,
County of Cook, Northern District of Illinois.

Be it remembered that on this the 12th day of October, 1889, I, K. G. Todd, a notary public, did call and cause to be and personally to appear before me, at my office, at the hour and place designated in the notice attached hereto as Exhibit "A," in the city of Chicago, Richmond Dean and James F. Bird to testify and the truth to say on the part and behalf of the complainant in a certain civil cause or matter of controversy now depending and undetermined in the circuit court of the United States for the middle district of Tennessee, at Nashville, wherein Pullman's Palace Car Company is complainant and the comptroller of Tennessee, formerly P. P. Pickard, now J. W. Allen, is defendant.

At the taking of said depositions I was attended by Mr. Wm. Burry, solicitor for complainant, and by Mr. Head, solicitor for defendant.

And the said RICHMOND DEAN, being about the age of twenty-nine years and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, was examined by Mr. BURRY on behalf of the complainant, and he did thereupon depose, testify, and say as follows, viz:

(Mr. Dean was not mentioned in the notice attached as Exhibit "A," but by agreement of counsel he was called in place of Mr. Garcelon, mentioned in the notice.)

Int. 1. State your name, residence, and occupation.

42 Ans. Richmond Dean; Chicago; assistant to the general superintendent of Pullman's Palace Car Company.

Int. 2. Do you know the contract under which the Pullman Company is operating sleeping cars upon the lines of the Nashville, Chattanooga & St. Louis Railway Company?

Ans. Yes, sir.

Int. 3. Will you produce and give to the notary, to be filed as an Exhibit "B," a copy of that contract?

Ans. Yes, sir.

Int. 4. Do you know generally the terms of the contract for the operation of sleeping cars between the Pullman Company and the Louisville and Nashville Railway Company?

Ans. Yes, sir.

Int. 5. Do you know generally the terms of other contracts under which the Pullman Company operates sleeping cars in Tennessee?

Ans. I am conversant with the general terms of all the contracts.

Int. 6. Are they substantially similar to the Louisville & Nashville contract just referred to?

Ans. They are all similar under which we are operating cars in Tennessee, in general terms.

Int. 7. The complainant has conductors and porters from time to time in Tennessee with its cars?

Ans. Yes.

Int. 8. Has it any other agents or representatives in Tennessee?

Ans. We have three: E. Donaldson, agent at Chattanooga; C. C. Chase, agent at Memphis, and George Zoeller, agent at Nashville.

Int. 9. State, generally, what the duties of those agents are.

Ans. Well, their duties are confined to seeing that men are provided for the cars when they leave on their runs; that they are properly furnished with supplies, such as soap, towels, etc., necessary in the operation of the cars. They also superintend the
43 cleaning of the cars to see that they are in proper condition.

Int. 10. Do they have any general power over the management of the company's cars?

Ans. No; they have no authority delegated to them whatever. They act entirely under the direction of the division superintendent.

Int. 11. Where is he situated?

Ans. In this case the lines in Tennessee are under Superintendent Martin, at Philadelphia.

Int. 12. Have these agents any power to make contracts or arrangements about the movements of cars except as they are directed in each case by the superintendent of the company?

Ans. None whatever.

Int. 13. Have they any other duties than that of keeping the cars in proper condition?

Ans. No; none at all that I remember. These are their principal duties.

Int. 14. I think you said that the complainant is now operating its cars under the terms of the old contract—Exhibit "B."

Ans. Yes; under an old contract—the Nashville, Chattanooga & St. Louis.

Cross-examination:

Cross-int. 1. Could you give me the number of cars owned by your company?

Ans. In the neighborhood of 2,000. I cannot say exactly.

Cr. Int. 2. Could you give me the average cost of these cars?

(Objected to as immaterial.)

Ans. Well, that I could not give without consulting the records. I am not conversant with the cost of all the cars we operate.

Cr. Int. 3. What is the average capacity of each of your cars for passengers?

Ans. We figure, as a rule in furnishing cars, that they will contain ten sections or twenty berths. The majority of them have
44 more than that number; but, generally speaking, in furnishing a car where we do not have the number designated we furnish ten sections or twenty berths.

Cr. Int. 4. You state that the copy of the contract and amendment, which you have filed as Exhibit "B" of your answer, with the Nashville, Chattanooga & St. Louis Railway Company covers the years 1887, 1888, and 1889.

Ans. Yes, sir.

Cr. Int. 5. Does your company pay any compensation for the sale of its tickets by the railway company's agents who serve you?

Ans. No, sir; none whatever.

Cr. Int. 6. I believe each of your sleeping cars has a name or number?

Ans. They are known either by name or number.

Cr. Int. 7. Could you give me the names or numbers of the various cars operated in Tennessee during the years 1887 and 1888?

Ans. I could not; no, sir. The cars are interchanged. I could not give numbers or names.

Cr. Int. 8. About how many were operated in and through the State during the years 1887 and 1888?

Ans. The service of the lines was likely in the neighborhood of 75.

Cr. Int. 9. Could you give me the names of the cars used by the Nashville, Chattanooga & St. Louis Railway Co. during the years 1887 and 1888?

Ans. No; I don't recall them, but will refer to the books and state them as a part of this deposition.

Cr. Int. 10. Will you also give me the run of these cars during that time?

Ans. Yes; we can give that also. The records from which answers to this question and the one before it can be best given
45 are not kept in my office, but in the auditor's office, and Mr. Bird, of the auditor's office, has answered them. I have read his answers and believe them to be correct.

Cr. Int. 11. Do not the records of your office show the point from which and to which every passenger who uses your cars travels?

Ans. The diagrams would show that, but I believe it is only customary to keep them for a certain length of time. They are not in our office; I could not speak definitely on the subject.

Cr. Int. 12. Does your company issue stop-over or transfer tickets from one car to another?

Ans. In some cases they issue what is called a transfer. If a car

breaks down on route and another car is available to receive its passengers we transfer them. It is always for continuous trips.

Cr. Int. 13. Then your tickets are only for continuous trips?

Ans. Yes, sir.

Cr. Int. 14. Do the records of your office show a single instance where a ticket was purchased for a continuous trip from Nashville or Memphis or any intermediate point to a point outside the State of Tennessee?

Ans. I cannot say; we have nothing to do with handling the checks.

RICHMOND DEAN.

J. F. BIRD, witness of lawful age, being produced on the part of complainant, and being duly sworn to testify to the truth, the whole truth, and nothing but the truth, deposes and says:

Int. 1. State your name, residence, and occupation.

Ans. James F. Bird, Chicago, auditor of receipts of the Pullman Company.

Int. 2. Are the diagrams or other reports of conductors showing the passengers carried on different cars of the Pullman Company returned into your office?

Ans. They are.

Int. 3. Are the regular runs of cars returned into your office?

46 Ans. The diagrams are.

Int. 4. Are you, generally speaking, conversant with the lines of the Pullman Company that run into or through Tennessee?

Ans. In a general way; yes.

Int. 5. Can you state generally the gross receipts of the Pullman Company per year for the last three years from lines running into Tennessee?

Ans. The amount would be in the neighborhood of $500,000 per year.

Int. 6. Please give a like approximation of what amount of those total gross earnings are taken from passengers carried locally in Tennessee on any of those lines.

Ans. Generally speaking, about $25,000 per year.

Int. 7. During the year 1887 were any cars run locally in Tennessee—that is, were any cars run between points and upon lines lying wholly in the State of Tennessee?

Ans. I believe not.

Int. 8. Do the regular trips of all the Pullman cars in service on lines which lie partially within Tennessee take them also outside of the State?

Ans. They do.

Cross-examination:

Cr. Int. 1. Are you familiar with the name and run of the cars operated in Tennessee running between Nashville and Memphis?

Ans. By referring to the records names could be given.

Cr. Int. 2. Will you by reference to your records give the names

and run and time of cars operated between Nashville and Memphis during the years 1887 and 1888?

Ans. I will. By an examination of the records of my office I find that the following sleeping cars ran between Nashville and Memphis over the Nashville, Chattanooga & St. Louis railway during 1887 and 1888:

1887—Names of cars: Angora, Antilles, Bolivar, Biloxi, 182 Conestoga, Caledonia, Carbondale, Dalta, 255 Dayton Elmore, Escort, 175 Elkmont, Eureka, Ephesus, Gallatin, Glendale, Guthrie, Hiawatha, India, Java, Kennesaw, Louisville, Lavaca, Monticello, Paoli, Palmetto, Pontotoc, 146 Saranac, Siesta, Tuscumbia, Tacitus, Talladega, Tiara, Westerly, Winetka, Woodland—36.

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1888—Names of cars: Antilles, Arctic, Biloxi, Bartholdi, Caledonia, Conestoga, Celtic, Capri, Delta, 255 Dayton, Elmore, 178 Elkmont, Fairview, Garden City, Guthrie, Hermione, Hispania, Kalamazoo, Louisville, Lavaca, Loretto, Monticello, Paoli, Pharos, Poncelet, Serapis, Winatka—27.

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None of these cars were operated exclusively over the N., C. & St. L. R. R. during 1887 and 1888, but they were also operated over many other lines of railroad and in other States.

On their runs between Memphis and Nashville these cars, in going from Memphis to Nashville, left Memphis in the evening and arrived at Nashville in the morning. In going from Nashville to Memphis they left Nashville in the evening and arrived in Memphis in the morning. The many points other than Nashville and Memphis to which these cars ran during 1887 and 1888 and the times of their arrival and departure are not, as I understand the question, called for in this answer. Ascertaining them would take a very long time covering so much territory and could not be done in a week. The cars that ran from Memphis to Nashville during 1887 and the greater part of 1888 were required to run on from Nashville to Louisville, returning to Memphis by the same route.

Cr. Int. 3. Are the conductors' berth checks that are issued to each passenger returned into your office?

Ans. They are.

Cr. Int. 4. Do these checks not always show the point from which and to which every passenger using your cars travels?

Ans. They do.

Cr. Int. 5. Have you those checks now in your custody or control?

Ans. They are retained only for a short time. None for the years 1887 and 1888 are now in existence.

Cr. Int. 6. Do the conductors' reports show the fact?

48

Ans. They do.

Cr. Int. 7. Have you those reports on file for 1887 and 1888?

Ans. Yes; a few may be missing, but generally speaking they are on file.

Cr. Int. 8. Do the records of your office show an instance where a

passenger purchased a seat from Nashville to Memphis or from Memphis to Nashville and in the same continuous trip passed to a point outside the State of Tennessee?

Ans. I can only tell by reference to the records.

Cr. Int. 9. Will you examine your records and answer that question?

Ans. I will. I have examined the records and been unable to find any.

Cr. Int. 10. I will ask you if the cars used by the Nashville & Chattanooga Railway Company between Nashville and Memphis do not make those points as one trip for 1887 and 1888.

Ans. After examining the records I find that during all of 1887 and the greater part of 1888 the cars leaving Memphis and going direct to Nashville were required to go to Louisville before returning to Memphis, their regular trip being from Memphis to Louisville and return. During the latter part of 1888 the different sleeping cars going from Memphis to Nashville usually returned the following night to Memphis unless they were ordered away to some other point and some other car sent to Memphis in their place.

Cr. Int. 11. Could you tell me how many different cars were used during the years 1887 and 1888 between Nashville and Memphis?

Ans. I find by examining the records that there were 36 in 1887 and 27 in 1888.

Cr. Int. 12. You state in your direct examination that the gross earnings of all your cars operating in and through Tennessee amount to about $500,000 per annum. About how many cars would it take to perform this service?

Ans. Generally speaking, about one hundred.

49 Cr. Int. 13. You say in your direct examination that all cars used in the State of Tennessee pass to a point outside of the State of Tennessee in their regular trip. Please designate the point to which the cars running between Nashville and Memphis pass outside of the State of Tennessee.

Ans. To the best of my memory, one point is Louisville.

Cr. Int. 14. Was this running arrangement in force during the years 1887 and 1888?

Ans. During all of 1887 and the greater part of 1888.

Cr. Int. 15. Will you give the time made by these cars between Louisville and Memphis, in continuous trips, passing by Nashville?

Ans. I shall be obliged to refer to the records and will then do so. The cars usually left Louisville in the evening, arriving in Nashville next morning, and left there for Memphis that evening, arriving in Memphis the following morning.

Cr. Int. 16. What do you mean by the run of a car?

Ans. Its usual run.

Cr. Int. 17. What do you mean by a continuous trip?

Ans. A trip in which there is no lay-over.

Cr. Int. 18. Do I understand you to mean, then, that the run of a car running between Louisville via Nashville and Memphis makes a continuous trip?

Ans. No, sir; I do not think they do.

Cr. Int. 19. I will ask you further if the line of railroad between Louisville and Nashville is not owned by the Louisville & Nashville R. R. Co., and that between Nashville and Memphis by the Nashville, Chattanooga & St. Louis R. R. Co.

Ans. I believe so.

Redirect examination:

Int. 1. You have been asked several questions about cars running between Nashville and Memphis in 1888. I will ask you
50 about all other cars of complainant operated in Tennessee, if any of them run solely between points in Tennessee, or if they run from points without the State into it during that time.

Ans. None of them whatever ran local. All were interstate.

Int. 2. Do cars of complainant always remain upon the same route?

Ans. They do not.

Int. 3. Do cars between any two points, such as Nashville, Tennessee, and Atlanta, Georgia, sometimes get changed off on other runs?

Ans. They do.

Int. 4. Does this occur frequently?

Ans. It does.

Int. 5. What governs such changes?

Ans. The operating department can best answer that question; I presume for convenience of operating or to meet the demands of travel.

Int. 7. Is the operation of cars and keeping accounts and ascertaining them easier when they are operated in long lines or short ones for the same number of miles operated?

Ans. In long lines.

JAMES F. BIRD.

UNITED STATES OF AMERICA, }
Northern District of Illinois, County of Cook, } *ss:*

I, K. G. Todd, a notary public, do hereby certify that the reason for taking the foregoing depositions is and the fact is the witnesses are material and necessary in the cause in the caption of said depositions named, and that they reside more than one hundred miles from where is held the court in which the above-mentioned cause is to be tried. I further certify that notification of the time and place of taking said depositions was made out and served on the defendants and service thereof accepted in the manner shown by the notice hereto attached as Exhibit "A." I further certify that on the 12th day of October, in the year 1889, I was attended by William Burry for complainant and Mr. Head for defendant and by the witnesses, who were of sound mind and lawful age, and the witnesses were first by me carefully cautioned to testify the truth, the
51 whole truth, and nothing but the truth, and the depositions were by me reduced to writing in the presence of the witnesses, and after reading the same to the witnesses they subscribed the same in my presence. I have retained the said depositions in

my possession for the purpose of mailing the same with my own hand to the clerk of the court for which they were taken. And I do further certify that I am not of counsel nor attorney for either of the parties in the said depositions and caption named, nor in any way interested in the event of the suit named in the said caption.

In testimony whereof I have hereunto set my hand and notarial seal this 15th day of October, 1889, and of the Independence of the United States the 113th year.

[NOTARIAL SEAL.] K. G. TODD,
Notary Public.

The following is Exhibit "A," referred to in the foregoing deposition:

To Messrs. Champion & Head, defendant's solicitors:

Please take notice that at 12 o'clock noon on Saturday, the 12th day of October, 1889, in room 204 in the Pullman building, situated on the southwest corner of Adams street and Michigan avenue, in the city of Chicago and State of Illinois, I will proceed, before K. G. Todd, notary public, or some other officer authorized by law, to take the depositions of T. H. Wickes, C. A. Garcelon, F. C. N. Robertson, and James F. Bird; said depositions, when taken, to be read at the hearing in said cause on behalf of complainant, and the taking of said depositions will be continued from day to day until completed. The reason for taking said depositions is that all the witnesses reside in Chicago aforesaid more than one hundred miles distant from the place of trial.

Chicago, Oct'r 4th, 1889.

WM. BURRY,
Comp'n't's Sol.

Due service of the above notice acknowledged the 7th day of October, 1889.

CHAMPION & HEAD, *Att'ys.*

The following is Exhibit "B" referred to in the foregoing deposition:

This indenture, made this eleventh day of April, 1872, between the Nashville and Chattanooga Railroad Company, the party
52 of the first part, and the Pullman Southern Car Company, of the second part:

Whereas the party of the second part is now engaged in the business of manufacturing railway cars known as drawing-room and sleeping cars, under certain patents belonging to them, and of hiring the same to railway companies under written contracts for a term of years, to be used and employed on and over the lines of the roads of said railway companies, receiving therefor income and revenue by the sale to passengers of berths, seats, and accommodations therein;

And whereas the said first party is desirous of availing itself of

the use, on and over its lines of road, of the cars constructed under the sleeping and drawing-room patents, now the property of the second party; also of connections by means of said cars with other lines of railway whereon said cars are now operated by said second party: Now this contract witnesseth:

First. That the said party of the second part, in consideration of the covenants and agreements of the party of the first part hereinafter mentioned, to be by them kept and performed, hereby agrees with the said party of the first part that they will furnish drawing-room cars and sleeping cars, to be used by said party of the first part for the transportation of passengers sufficient to meet the requirements of travel over their lines of railroad and on and over all lines of railroad which they now control or may hereafter control by ownership, lease, or otherwise, the said cars to be satisfactory to the general superintendent of the said first party.

Second. The said party of the second part hereby agrees that it will keep the carpets and upholstery and bedding of each of the said cars in good order and repair and renew and improve the same, when necessary, at its own expense, except repairs and renewals made necessary by accident or casualty, it being understood that the said first party shall repair all damages to said cars of every kind occasioned by accident or casualty during the continuance of this contract.

Third. The said party of the second part hereby agrees at
53 their own cost and expense to furnish one or more employés, as may be needful, upon each of said cars, whose duties it shall be to collect fares for the accommodations furnished in said cars and generally to wait upon passengers in said cars and provide for their comfort.

Fourth. The said party of the first part hereby agrees that the general officers of the second party and the employés named in article third of this agreement shall be entitled to free passage over the lines of the first party when they are on duty for the said second party.

Fifth. The party of the second part hereby agrees that the general officers of the first party shall be entitled to free passes in any of the cars furnished by said second party under this agreement.

Sixth. It is hereby mutually agreed that the said employés of the second party, named in article third of this contract, shall be governed by and subject to such rules and regulations of the said first party which are or may be adopted from time to time for the government of their own employés, and, in the event of any liability arising against said first party for personal injury, death, or otherwise of any employé of the said second party, it is hereby distinctly agreed that the said first party shall be liable only to the extent they would be if the person injured was an employé in fact of the said first party, and for all liability in excess shall be indemnified and paid by said second party.

Seventh. The party of the first part, in consideration of the use of the aforesaid cars, hereby agrees to haul the same on the passenger trains of their own road and on all roads which they now

own or control or may hereafter control by ownership, lease, or otherwise, and also on all passenger trains on which they may, by virtue of contracts or running arrangements with other roads, have the right to use such cars in such manner as will best accommo-
54 date passengers desiring the use of said cars.

And the said party of the first part shall, at their own expense, furnish fuel for the cars and material for the lights, shall wash and cleanse said cars, and shall also keep said cars in good running order and repair, including renewals of worn-out parts, and all things appertaining to said cars necessary to keep them in first-class condition, except such as are provided for in article second of this agreement.

Eighth. The party of the first part agrees to furnish said second party, without charge, at convenient points, room and conveniences for airing and storing bedding.

Ninth. The said party of the first part further agrees that the said party of the second part shall be entitled to collect from each and every person occupying said cars such sums for said occupancy as may be usual on competing lines furnishing equal accommodations, and that such rules and regulations shall be mutually agreed upon as will most favor the renting seats and couches in said cars.

Tenth. The party of the first part hereby agrees to permit the party of the second part to place its tickets for seats and couches for sale in such of the railway ticket offices as may be desired by said party of the second part, and such service shall be performed by and as a part of the general duties of the ticket agents and without charge to the party of the second part; proceeds of such sales to be at the risk of the second party.

Eleventh. The party of the first part hereby agrees that said second party shall have the exclusive right for a term of fifteen years from the date hereof to furnish for the use of said first party drawing-room cars or parlor cars and sleeping cars, including reclining-chair cars, on all the passenger trains of said first party and over their entire line of railroad and on all roads which they may control or may hereafter control by ownership, lease, or otherwise, and also on all passenger trains on which they may by virtue of contracts or running arrangements with other roads have the right to use
55 such cars, and that they will not contract with any other parties to run said class of cars on and over said lines of road during said period of fifteen years.

Twelfth. The said party of the second part, for the consideration aforesaid, hereby guarantees said first party against all damages of whatever kind which may be by said first party incurred in consequence of any infringement of patent rights in the construction and use of any of said cars which may be used by said second party upon the lines of said first party under this agreement, it being the meaning and intent of this article that said second party shall secure said first party against all manner of expenditures which may be incurred by said first party in consequence of any litigation connected with alleged infringements of patent rights for the interior arrangements of said cars, and that they will pay off and discharge

all judgments obtained at any time against said first party on account of such infringements.

Thirteenth. It is mutually agreed between the parties hereto that in case either of said parties shall at any time hereafter fail to keep and perform any of the covenants herein contained to be by them respectively kept and performed, then and in that case, after written notice shall have been given to the defaulting party hereto of the default complained of, if the said defaulting party shall refuse or neglect to make good, keep, and perform such unfulfilled covenants and conditions of this agreement within a reasonable time after such notice the other party shall be at liberty to declare this contract ended and no longer in force.

Fourteenth. It is mutually agreed between the parties hereto that all equipments that may be put upon the road of said first party under this agreement shall be represented by stock in amount at par value exactly equal to the cost of said equipment, such stock to be either the Pullman Southern Car Company's stock, issued by that company, or to be stock issued by a new company to be
56 organized by the parties hereto under the — Nashville & Chattanooga Car Company.

It is further agreed that said first party shall have the right and option to determine which of the two above-mentioned ways shall be followed—that is, whether, for the equipment to be put put upon its road under this agreement, the stock of the Pullman Southern Car Company shall be issued or the stock of a new company, to be organized as above designated; but it is also agreed that such option and right of determination shall be exercised by the first party, if at all, and communicated to the second party in writing within twelve months from the date hereof. In the event of said first party either failing or neglecting to inform said second party in writing of its conclusions in the premises within the time specified above it is understood between the parties hereto that stock for said equipment shall be issued by the Pullman Southern Car Company.

It is further agreed that each party to this agreement shall be entitled to take, upon paying therefor at the lowest price at which such stock shall have been issued by the party of the second part, one-half of the stock representing the equipment that may be placed upon said first party's road under this agreement.

It is understood and agreed between the parties hereto that the sleeping cars now on the lines of the first party, named respectively Memphis, Nashville, Virginia, Decatur, Fairview, and Winetka, are hereby accepted, and are to be put in first-class condition by the respective parties under the provisions of this contract.

It is agreed that the acceptance of the cars Memphis, Nashville, Virginia, and Decatur, as hereinabove recited, is for the period of seven years and six months, or a less time: Provided, that in the judgment of the president of the party of the first part the business shall sooner require better equipment, in which case the party of the second part hereby agrees to furnish first-class cars in lieu of the cars hereinabove mentioned whenever the said party of the first

part shall make requisition for the same, and agree and guar-
57 anty the second party gross earnings for each of said cars to be furnished of three hundred dollars per month.

In witness whereof the party of the first part hath caused its corporate seal to be attached hereto by the president and secretary, and the party of the second part hath caused its corporate seal to be attached hereto in like manner, attested by its president and secretary.

Dated the day and year first above written.

NASHVILLE & CHATTANOOGA R. R. CO.,
[L. S.] By E. W. COLE, *Pres.*
[L. S.] THE PULLMAN SOUTHERN CAR CO.,
By GEO. M. PULLMAN, *Pres.*

Attest: S. M. LEMONT, *Sec'y.*

EXHIBIT "B" Continued.

Whereas the Nashville & Chattanooga & St. Louis Railway Company and the Pullman Southern Car Company heretofore, to wit, on the 11th day of April, 1872, entered into a contract in writing herein and hereafter referred to;

And whereas the said named parties have agreed upon certain changes in said contract, and, in consideration of a settlement growing out of said contract, the terms of which settlement have been fully complied with by both parties, have made the following agreement:

Now, this contract of agreement between the said Nashville & Chattanooga & St. Louis Railway Company, of the first part, and the Pullman Southern Car Company, of the second part, witnesseth:

First. That the Pullman Southern Car Company hereby agrees to furnish the party of the first part the sleeping cars Fairview, Winetka, and Etowah, the same having been selected and accepted by the party of the first part as being now in good order and equal to the demands of travel on the railroad of the first party, and from this date the said Pullman Southern Car Company will maintain said cars in good order and condition at its own expense, so far as ordinary wear is concerned, except as hereinafter excepted and provided for.

Second. In consideration of the above and foregoing obli-
58 gation on the part of the Pullman Southern Car Company the said Nashville & Chattanooga & St. Louis Railway Company hereby agrees, monthly and at the end of every month, to pay said Pullman Southern Car Company three cents per mile for each car run by it on its lines of road, and further agrees and obligates itself to be liable for all damages to any or either of said cars so named or to such other cars as the increase of travel may require to be furnished under this and the original contract referred — or cars placed in lieu of said cars while shopped on its road during the existence of this contract, except such damage resulting from defective heat-

ing apparatus or lighting apparatus or to glass or to globes or to heating and lighting apparatus caused by the employés of the Pullman Southern Car Company.

Third. The said Nashville, Chattanooga & St. Louis Railway Company hereby agrees to supply at its own expense all the material necessary for lighting and heating said cars; also to furnish and apply the lubricating material for the journals of said cars, and to supply ice and water in sufficient quantities for the use of passengers occupying said cars, and shall also wash and cleanse said cars as the same may be required.

Fourth. The Nashville, Chattanooga & St. Louis railway hereby agrees to permit the Pullman Southern Car Company to place its tickets for seats or berths for sale in the ticket offices of the said railway without charge to the Pullman Southern Car Company, the proceeds of such sales to be at the risk of the Pullman Southern Car Company, and permit the said Pullman Southern Car Company to collect from each and every person occupying said cars for such occupancy such sum for the same as is usual on competing lines furnishing equal accommodations.

Fifth. The Pullman Southern Car Company agrees hereby that the general officers of the said Nashville, Chattanooga & St. Louis railway shall be entitled to free passes in said cars furnished and to be furnished as aforesaid by the Pullman Southern Car Company under this contract.

59 Sixth. The said Nashville, Chattanooga & St. Louis railway hereby agrees that the general officers of the Pullman Southern Car Company shall pass free over its said lines of road.

Seventh. It is agreed by the parties of the first and second parts hereto that the contract now existing and herein and hereinbefore referred to between them shall be so far changed as that the sleeping cars furnished and to be furnished as herein provided for shall be placed on a mileage basis, to commence from the first day of January, 1879, and that said party of the first part shall pay to the party of the second part at the end of each month during the continuance of this contract three cents per mile for each car run over its said lines of railroad; this contract to be of full force as if herein repeated for the balance of the unexpired term of the contract entered into between the parties on the 11th day of April, 1872, or until the 11th day of April, 1887.

Eighth. It is agreed by the parties hereto that should the party of the second part during the continuance of this contract reduce its mileage contracts with other railroads less than three cents a mile the benefit of such reduction shall avail to that extent the party of the first part.

Ninth. It is further agreed that if the air-brake hose is broken from other cause than the effect of wear it shall be replaced by the party of the first part; otherwise by the party of the second part.

Tenth. It is agreed and understood that this contract does not annul the contract entered into on the 11th day of April, 1872, between the said parties, but it is supplemental thereto and changes

the same only as the same is specifically expressed. All other parts of the original contract are operative.

Signed, sealed, and delivered by the legal representatives of the said companies hereto and who have caused to be affixed the corporate seals of their respective companies hereunto.

For the Nashville, Chattanooga & St. Louis railway—

60 [SEAL.] J. W. THOMAS, *Gen'l Sup't.*

Attest: R. C. BRANSFORD, *Sec'y.*

THE PULLMAN SOUTHERN CAR CO.,

[SEAL.] By GEO. M. PULLMAN, *Pres.*

Attest: A. S. WEINSHEIMER, *Sec'y.*

EXHIBIT "B" Continued.

Subject: Contract with N., C. & St. L. R. R.

Pullman's Palace Car Co., superintendent's office.

CINCINNATI, *April* 23*d*, 1887.

T. H. Wickes, Esq., general superintendent, Chicago, Illinois.

DEAR SIR: I have to advise you that I have made an arrangement with Col. J. W. Thomas, president and general manager N., C. & St. L. R. R., that, until a new contract with his company is agreed to, we will operate the line of sleeping cars over his road under the terms of the old contract, which expired on the 11th inst.

Very respectfully, JAMES MARTIN, *Superintend.*

61 The following final decree was rendered at the April term, 1890:

This cause came on to be heard at this term upon the bill, answer, replication thereto, proof, and argument of counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed that the temporary injunction heretofore issuing out of this court restraining and enjoining the defendants and each of them and their attorneys, agents, clerks, and servants from selling the sleeping car "Wetumpka," seized by them, and from taking any further steps in regard to said car to enforce the collection from complainant of any privilege tax for operating its sleeping cars within the State of Tennessee for the year 1889, or from collecting said tax or taking any proceeding to enforce the collection thereof be made perpetual, and that the defendants pay the costs of this cause, for which let execution issue.

And thereafter, to wit, at the said April term, 1890, the following further decree was rendered:

This cause this day came on further to be heard upon the former proceedings and the final decree rendered at this term; and the defendant prayed an appeal therefrom to the Supreme Court of

62 the United States, which the court was pleased to grant, and the penalty of the bond for such appeal is fixed at one hundred and fifty dollars.

Thereupon came the defendant, J. W. Allen, comptroller, and executed the following bond:

Know all men by these presents that Leon Trousdale, Jr., and Boone Canller are held and firmly bound unto the Pullman Palace Car Company in the full and just sum of one hundred and fifty dollars, to — said Pullman Palace Car Company, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally. Sealed with our seals and dated this the 10th day of July, 1890. Whereas at a court lately held by the circuit court of the United States for the middle district of Tennessee, in a suit pending in said court between Pullman's Palace Car Company and J. W. Allen, comptroller, a decree was rendered against the said J. W. Allen, comptroller, and the said J. W. Allen, comptroller, having obtained an appeal and filed a copy of the record in the clerk's office of the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directing the said Pullman's Palace Car Company to be and appear at a Supreme Court to be holden at Washington, D. C., on the second Monday of October next: Now, the condition of the above obligation is such that if the said J. W. Allen, comptroller, shall prosecute with effect said appeal and answer all damages and costs if he shall fail to make his appeal good, then the above obligation to be void; otherwise to remain of full force and effect.

LEON TROUSDALE, JR.
BOONE CANLLER.

63 I, H. M. Doak, clerk of the circuit court of the United States for the middle district of Tennessee, at Nashville, certify that the foregoing is a true, perfect, and complete transcript of the record in the above-styled cause of Pullman's Palace Car Company *versus* J. W. Allen, comptroller of the State of Tennessee, and others as the same is of record and on file in my office.

Done at my office this the 9th day of July, 1890.

Witness my name subscribed and the seal of the court affixed hereunto.

[Seal Circuit Court U. S., Middle District Tenn.]

H. M. DOAK, *Clerk.*

The costs herein have all been paid by the State of Tennessee.
Nashville, Tenn., July 16, 1890.

H. M. DOAK, *Clerk.*

Endorsed on cover: M. Tennessee C. C. U. S. No. 1382. J. W. Allen, comptroller of the State of Tennessee, appellant, *vs.* Pullman's Palace Car Company. Filed October 11, 1890.

SUPREME COURT, UNITED STATES,

OCTOBER TERM, 1890.

J. W. ALLEN,

Comptroller of the State of Tennessee, Appellant,

VS.

PULLMAN PALACE CAR CO.

Nos. 1381, 1382.

BRIEF OF

G. W. PICKLE,

Attorney General for the State of Tennessee.

MARSHALL & BRUCE, STATIONERS, NASHVILLE.

J. W. ALLEN, COMPTROLLER OF THE STATE OF TENNESSEE, APPELLANT,

vs.

PULLMAN'S PALACE CAR COMPANY.

No. 1381.

This suit in equity was brought by Pullman's Palace Car Company, in the Circuit Court of the United States for the Middle District of Tennessee, to enjoin J. W. Allen, Comptroller (and a collector of taxes) of the State of Tennessee, from proceeding to collect certain privilege taxes claimed by the State against said company for the years 1887 and 1888.

There was final decree perpetually enjoining the collection of said taxes. Appeal was taken on behalf of the State.[1]

The chief contention on behalf of the appellee is that the tax enjoined is void as an imposition upon interstate commerce.

To define the issue on this point sharply and at once, the appellant will concede that the tax in-

[1] Trans., 2–11, 59–61. All references in this brief are to marginal pages.

volved is absolutely void if it shall be determined that it is in fact or in legal effect an imposition upon interstate commerce, or upon any of its instrumentalities.

On the other hand, the appellee cannot controvert its validity if it has been laid wholly and alone upon that internal commerce which is within the exclusive jurisdiction of the State and entirely beyond the Federal control.

The solution of this question must depend upon the construction to be given the State statute and the nature of the business done by appellee within the State of Tennessee.

The appellant will present the other questions relied upon in his assignment of errors.

STATEMENT.

The statute of the State of Tennessee that imposed the tax complained of, is a portion of the general "Revenue Act"[1] passed at the legislative session of 1887.[2]

Those parts of that Act material to this inquiry are as follows:

SEC. 4. *Be it further enacted*, That the rate of taxation on the following privileges shall be as follows (per annum):

* * * * *

SEC. 5. *Be it further enacted*, That the following corporations shall pay directly to the Comptroller's office the following taxes:

* * * * *

SLEEPING CAR COMPANIES.

Each company doing business in the State, on each car, per annum, $500.

* * * * *

SEC. 8. *Be it further enacted*, That any and all parties, firms,

[1] In Tennessee, at each biennial session of the Legislature, the tax laws are re-enacted. Two lengthy bills are passed—one, the "Assessment Act," defines the subjects of taxation and prescribes the time and manner of assessment of taxes, etc.; the other, known as the "Revenue Act," fixes rate of taxation upon property, polls, and privileges. The full text of this latter Act is appended to this argument. There is no discrimination in any particular against non-residents in these statutes. The provision in the State Constitution regulating the subject of taxation is also given in the appendix. It will be observed that while it places severe restrictions upon the legislative power to tax property and polls, it expressly provides: "But the Legislature shall have the power to tax merchants, peddlers, and *privileges* in such manner as it may from time to time direct." Art. II., § 28.

[2] Acts 1887, Ch. 1. (See Appendix.)

or corporations exercising any of the foregoing privileges must pay the tax as set forth in this Act for the exercise of said privilege, whether they make a business of it or not, and this Act shall not be so construed as to exempt any person, firm, or corporation, whatever, exercising any of the foregoing privileges from the payment of the tax herein prescribed for the exercise of said privilege, except as herein provided; and it is hereby declared a misdemeanor for exercising any of the foregoing privileges without first paying the tax prescribed for the exercise of said privileges; and all parties so offending shall be liable for a fine of not less than $50 nor more than $500.

The facts with reference to the character of business done by the Pullman Company within the State of Tennessee are undisputed. They are admitted in its bill or proved by the testimony of its officers and agents. These facts, so far as material, are as follows:

The Pullman Palace Car Company is an Illinois corporation. It is engaged in that State in the manufacture of palace-cars and sleeping-cars. These cars it operates by special contract with the railway companies over many of the lines of transportation in the United States, Canada, and Mexico. They are employed in the carriage of persons, affording them sleeping and other accommodations in transit. The business done by them is varied—international, interstate, and internal within the States. Sometimes cars are devoted exclusively to a single branch of business; at others they are employed concurrently in two or more branches.[1]

During the years 1887 and 1888 this Pullman

[1] Trans., 2–11, 25–35, 47–58.

Company operated upon railway lines in Tennessee, through its resident agents, "an average of more than thirty sleeping-cars." It also operated palace-cars. The extent of its business may be inferred from the fact that it derived from interstate and internal commerce done within the State of Tennessee $500,000 per annum.[1]

Several of the cars operated in Tennessee were engaged, during a portion of the time at least, exclusively in internal commerce.

The "run" of these cars was between Memphis and Nashville, and wholly within the State of Tennessee. They never made continuous trips beyond those points. For the purpose of evading taxation, they were caused, occasionally, to pass over the State line. Tickets for these cars were for local travel within the State exclusively.

Other cars operated in or through said State were employed, indiscriminately, in accommodating interstate and local internal travel. Others still were employed in purely interstate commerce.

No tax is claimed for the latter class, but only for cars falling within the first two classes.

This company has paid no taxes of any character to the State of Tennessee. It insists that it is liable for none.

The objections urged by the Pullman Company

[1] Trans., 7, 29.

against the validity of the tax claimed can be best stated in the language of its injunction bill:

> Your orator alleges and charges that said tax enactment of 1887, herein set out, is illegal and unconstitutional, because it discriminates in favor of railroad companies, in that it imposes a tax upon the property and business of companies doing business as a sleeping or palace-car company only, and exempts from such tax railroad companies using and operating their own sleeping-cars in said State; and is in violation of Section 28, Article II., of the Constitution of the State of Tennessee, which provides that "all property shall be taxed according to its value, * * * * * so that taxes shall be equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value."[1]
>
> Your orator insists that the State of Tennessee has no jurisdiction of the person, property, or business of your orator for the purposes of taxation, and that your orator, being engaged in the business of interstate commerce, is exempt from such regulation and taxation by the Constitution of the United States.
>
> Your orator further shows that the sum of five hundred dollars per car is an unjust, oppressive, and exorbitant tax even if any such tax could be imposed.[2]

This extract from appellee's bill embodies all objections made to the validity of the tax involved.

The single ground for injunction stated in the bill is an apprehension of "irreparable injury."

No steps had been taken to collect the tax.

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[1] See Appendix.

[2] Trans., 8–9.

It is averred that the State Comptroller had *threatened* to collect the tax, and that complainant *feared* and *believed* that he would issue a distress warrant that would be levied upon its cars, and thereby obstruct its business, injure its "credit and reputation," and subject it to suits by its customers. There is no averment that complainant was unable to pay the tax under protest, and sue for its recovery as provided by a statute of the State, and thereby avert the serious consequences apprehended.[1] There was no written opinion, and the decree of the lower Court is in general terms, and therefore it will be necessary to cover the entire case by the assignment of errors.

[1] Trans., 8.

ASSIGNMENT OF ERRORS.

FIRST.

The Circuit Court erred in its construction of the Tennessee statute in this, that it held that the statute embraced and imposed a burden upon interstate commerce, and was therefore void as an infraction of the commerce clause of the Federal Constitution.

The Court should have determined that the statute did not concern or embrace interstate commerce, but only that internal commerce begun, conducted, and ended wholly within the State; or, having construed the statute to embrace interstate as well as internal commerce, the Court should have determined that the two subjects were distinct, and separable, and that the statute, though unconstitutional and void as to the former, was nevertheless valid and effectual as to the latter.

SECOND.

The Circuit Court erred in determining that the business done by appellee within the State of Tennessee was wholly interstate and not to any extent internal commerce, and that therefore it was not subject to State taxation.

The Court should have held that appellee was

liable, under the statute, to pay the tax upon all cars that were employed to any extent, whether exclusively or otherwise, in the transportation of persons from one point to another wholly within the State of Tennessee.

THIRD.

The Circuit Court erred in enjoining this tax upon the allegation that the statute imposing it contravened the State Constitution, and that the tax itself was "unjust, oppressive, and exorbitant."

These are not Federal questions. The allegations are not true in fact nor tenable in law.

FOURTH.

The Circuit Court erred in holding that appellee was entitled to the remedy by injunction upon the facts of this case.

There is neither averment nor proof of facts constituting "irreparable injury." There was a plain, adequate, and unembarrassed remedy at law under a statute of the State. The proof shows that appellee had engaged in fraudulent and discreditable practices to evade the tax-laws of the State.

ARGUMENT.

I.

The Tennessee statute that levies upon sleeping-car companies "doing business in the State" an annual privilege tax of $500 per car, does not contravene the commerce clause of the Federal Constitution.[1] *Because—*

(1) *It does not embrace or tax interstate commerce, but only that internal commerce which is begun, conducted, and ended wholly within the State. But—*

(2) *If it does embrace interstate as well as internal commerce, then the two subjects, being distinct and separable, the statute, though void as to the former, will be sustained as to the latter.*

There can be no doubt that this statute covers the entire subject of *internal* commerce, and levies, without discrimination, the prescribed tax upon *all* who engage to any extent in that character of business.

This is clearly manifested by the provisions of the eighth section of said "Revenue Act" requiring "that any and all parties, firms, or corporations exercising any of the foregoing privileges, must pay the tax as set forth in this Act for the exer-

[1] Art. I., § 8.

cise of said privilege, *whether they make a business of it or not*," and declaring it a misdemeanor, punishable by fine, to exercise "any of the foregoing privileges without first paying the tax prescribed for the exercise of said privileges."

"There is undoubtedly an internal commerce which is subject to the control of the State," and in which sleeping-car companies may engage, to which the language of the statute may, with propriety, be applied.

> It has often been held in this Court, *and there can be no doubt about it*, that there is a commerce wholly within the State, which is not subject to the constitutional provision, and the distinction between commerce among the States, and the other class of commerce between the citizens of a single State, and conducted within its limits exclusively, is one which has been fully recognized in this Court, although it may not be always easy, when the lines of these classes approach each other, to distinguish between the one and the other.
>
> **Railroad v. Mississippi, 133 U. S., 587-595.**

To confine the operation of the statute to this *internal* commerce fully satisfies its language, harmonizes with its history and purpose, and saves it from any constitutional infirmity.

The language of the statute does not in terms, nor by necessary intendment, embrace interstate commerce. It constitutes but a brief clause in a lengthy revenue Act[1] fixing the rate of taxation on property and on about seventy "privileges."

[1] See Appendix.

To presume that such an Act was intended in any of its parts to apply to subjects not within the jurisdiction of the State, imputes to the Legislature excess of folly or ignorance. This the Courts are loth to do.

Ogden v. Sanders, 12 Wheat., 213.
Cooley Const. Lim. (5th Ed.), p. 219.

Unless it is absolutely unavoidable, no meaning should ever be given to a statute that brings it in conflict with the fundamental law.

An eminent expounder of constitutional law has said—

That when Courts are called upon to pronounce the invalidity of an act of legislation, passed with all the forms and ceremonies requisite to give it the force of law, they will approach the question with great caution, examine it in every possible aspect, and ponder upon it as long as deliberate and patient attention can throw any light upon the subject, and never declare a statute void unless the nullity and invalidity of the Act are placed beyond reasonable doubt. A reasonable doubt must be solved in favor of the legislative action, and the Act be sustained.

Cooley Const. Lim., p. 218, citing Cooper v. Telfair, 4 Dall., 14.

To the same effect is the language of Chief Justice Marshall in *Fletcher* v. *Peck*, 6 Cranch, 87, 128; and of the Tennessee cases.

Townsend v. Sharp, Cooke's Rep., 300.
Arrington v. Cotton, 1 Bax., 316, 319.

The State Courts have not construed this particular clause of the "Revenue Act" of 1887. If they had, this Court would adopt their construction.

However, in passing upon an analogous clause of that Act, the Supreme Court of Tennessee have settled the rules for construction of the entire Act.

One clause of the Act imposed upon water companies in cities of over 40,000 inhabitants a privilege tax of $600 per annum. This tax was claimed by the State for water-works owned by the city itself and operated for the public benefit. Such water-works are taxable under the State Constitution, and there was no exception in the statute.

But the Court held that the city's water-works were excepted from the operation of the statute by implication, upon the ground that the Legislature is not to be held to intend to tax public property, though it may have the right to do so, unless it shall so distinctly declare.

Nashville v. Smith, 86 Tenn., 213.
S. C., 88 Tenn., 464.

A fortiori the Legislature should not be held to intend to impose a tax upon subjects beyond its jurisdiction and in violation of the Constitution, unless it has so enacted in unambiguous terms.

The State authorities have never construed this statute as embracing interstate commerce, and disclaim any such construction now.

It is the *tax-payer* who insists upon this enlarged construction of the statute in order to destroy it altogether.

This is not a case that demands harsh presumptions against the validity of a State law. This Pullman Company, enjoying the fullest protection of Tennessee laws for its large business interests in the State, from which it derives over $500,000 annually, pays not one dollar into the treasury of the State for that protection.

It has resorted to fraudulent evasion of the tax-laws of the State. For this purpose it has sent its cars, employed exclusively in internal commerce, occasionally across the State line.

The "Revenue Act" imposing the tax complained of, is fair and just. Along with sleeping-car companies, seventy other business avocations are taxed as "privileges." Among the privileges declared and taxed, are butchers, boarding-houses, cotton compresses, fruit stands, gas companies, ice dealers, livery stables, lumber dealers, public parks, vehicles, merchants, litigation, and marriage licenses.

There is no discrimination in favor of or against any one, either resident or non-resident, person or corporation. This system of taxing privileges is a very old one in Tennessee. It has constitutional sanction. From this source more than one-third of the State's revenue is derived.

Upon the legislative power to create and tax "privileges" the State Constitution has imposed

no limitation whatever, but has in express terms relegated that matter to the discretion of the law-makers.

The Legislature may declare any occupation it chooses a "privilege," and tax it, as such, to any extent it may desire.

Kurth v. State, 86 Tenn., 134.
Jenkins v. Ewin, 8 Heis., 456.
Wiltse v. State, Id., 544.
State v. Crawford, 2 Head, 462.
Columbia v. Guest, 3 Head, 413.

By the exercise of this discretionary power, the Legislature is enabled to distribute more equitably the burdens of taxation. But whether the power is exercised wisely or not, is not a question for the Courts.

The Courts will not run a race of wisdom with the Legislature in such matters.

But if the statute be construed to embrace interstate, as well as internal commerce, still its operation and legal effect will be precisely the same as if interstate commerce had been entirely excluded.

The two classes of commerce constitute distinct and separable subjects of legislation. One is of exclusive Federal jurisdiction; the other of exclusive state cognizance.

Unless they are distinct and separable subjects,

internal commerce could not be taxed at all by the States. Indeed, it could not exist. It would be swallowed up by the "Aaron's rod" of interstate commerce.

If the two subjects are distinct and separable, and both are embraced, then the statute may be void as to one and valid as to the other.

For this proposition there is abundant authority.

Albany County v. Stanley, 105 U. S., 305.
Bank of Hamilton v. Dudley, 2 Pet., 492.
Packet Company v. Keokuk, 95 U. S., 80.
Presser v. Illinois, 116 U. S., 252.
Tierman v. Rucker, 102 U. S., 123.
Florida Central Railroad Company v. Schutte, 103 U. S., 118.
Unity v. Burrage, Id., 447.
Peuniman's Case, Id., 714.
Hills v. Bank, 105 U. S., 319.
Bank v. Brittin, Id., 322.
Steamship Company v. Pennsylvania, 122 U. S., 326.
Poindexter v. Greenhow, 114 U. S., 270.

If there are any exceptions to this rule, they must be of cases only where it is evident from a contemplation of the statute and of the purpose to be accomplished by it that it would not have been passed at all, except as an entirety, and that the general purpose of the Legislature will be defeated if it shall be held valid as to some cases and void as to others.

Cooley Const. Lim., pp. 215, 216.

To the same effect are the decisions of this Court.

Trade-mark Cases, 100 U. S., 82, and cases above cited.

Will it be pretended that the Legislature of Tennessee would not have taxed sleeping-car com-

panies at all, if they had supposed that tax could not reach the interstate, as well as the internal, commerce of such companies?

What purpose of the Legislature will be defeated by enforcing this tax so far as it is constitutional?

There are certain cases decided by this Court which seem to be directly in point.

A statute of Texas imposing upon telegraph companies doing business within that State an occupation (privilege) tax of one cent upon all full rate, and one-half cent upon all less than full rate, messages, including by its terms both interstate and internal business, was declared void as to interstate, and permitted to stand as to internal business.

W. U. Tel. Co. v. Texas, 105 U. S., 460.

Upon similar statutes of the States of Massachusetts, Ohio, and Pennsylvania a like result was reached.

W. U. Tel. Co. v. Massachusetts, 125 U. S., 530.
W. U. Tel. Co. v. Pennsylvania, 128 U. S., 39–40.
Ratterman v. W. U. Tel. Co., 127 U. S., 411.

In the last-named case, Mr. Justice Miller, delivering the unanimous opinion of the Court, said:

Neither are we of opinion that there is any real question, under the decisions of this Court, in regard to holding that so far as this tax was levied upon receipts properly appurtenant to

interstate commerce that it was void, and that so far as it was upon commerce wholly within the State, it was valid.

* * * * *

Under these views, we answer the question in regard to which the Judges of the Circuit Court divided in opinion, by saying that a single tax assessed under the Revised Statutes of Ohio, upon the receipts of a telegraph company which were derived partly from interstate commerce and partly from commerce within the State, but which were returned and assessed in gross and without separation or apportionment, is *not* wholly invalid, but is invalid only in proportion to the extent that such receipts were derived from interstate commerce.

This principle finds further illustration in the *State Freight Tax Cases*, 15 Wall., 232.

In all these cases the statutes imposed the taxes in general terms, comprehensive enough to include both classes of commerce.

The taxes were imposed variously—upon "messages," "gross receipts," and "tons of freight." In all the cases the tax-payer was held to the duty of making the separation between the interstate and internal business. He alone could do that in any case. Not to hold him to that resposibility is to leave to him the power to defeat his own taxation.

If separation may be made by "messages" and "tons of freight" there can be no serious difficulty in making it by "cars."

The case of *Leloup* v. *Port of Mobile*, 127 U. S., 640, is not authority upon this aspect of this case, because this Court was concluded, in that case, by the construction put upon the ordinance imposing the tax by the Supreme Court of Alabama.

The ordinance, in that case, levied the tax upon the telegraph company *in solido*, affording no unit or measure for its separation or apportionment.

Such was the tax of $5 per annum upon each pole of a telegraph company, sued for in case of *City of St. Louis* v. *Western Union Telegraph Company*, 39 Fed. Rep., 59.

Such a tax, of necessity, affects and burdens interstate commerce, for no class of telegraphic business can be carried on without the use of the poles.

A tax upon cars is different. The company can employ its cars in either interstate or internal commerce, or both, at its option. It can separate these classes of commerce, and the cars used in one from those employed in the other.

This is not intended to be an *ad valorem* tax upon the value of the cars. The car is adopted as a unit or measure for the ascertainment and separation of the tax. The tax is an occupation tax, measured by the number of cars employed, and therefore is reasonably proportioned to the business done.

The conclusion is that the statute that imposed the tax enjoined in this cause is valid so far as concerns the taxation of cars employed in internal commerce, regardless of whether interstate commerce is included or excluded by its language.

II.

The business done within the State of Tennessee by the appellee company was, in part at least, such internal commerce as is taxable by the State laws, and embraced by the said "Revenue Act" of 1887.

The cars, sleeping and palace, running locally between Nashville and Memphis, were engaged in pure internal commerce, and are liable for taxes, notwithstanding the attempted evasion by changing them to other lines and running them occasionally across the State line.

The cars employed in a mixed interstate and internal business are likewise taxable and embraced by said statute; otherwise the will of the company, and not the law, must determine whether it shall pay taxes.

There can be, it would seem, no serious controversy about the appellee company's liability for taxes upon such sleeping-cars and palace-cars as were employed in running between Nashville and Memphis and wholly within the State of Tennessee.

These cars accommodated only internal business. Their "run" was wholly within the State. The

tickets for transportation upon them were for local travel only.[1]

This is internal commerce, if there be such a thing.

This company, under another name, conceded its liability for taxes of other years upon cars engaged on this line and in the same character of business.

Pickard v. Pullman, etc., Company, 117 U. S., 34-51.
Tennessee v. Pullman, etc., Company, 117 U. S., 51, 52.

Indeed, the company's liability for taxes on these cars is not seriously controverted now unless an evasion of the tax-laws of the State, invented and practiced by the company since the decisions in the above cited cases, shall be held valid and effectual.

For the purpose of evading the tax-laws of the State, the appellee company resorted to the practice of making frequent changes in the cars employed on this line, and of causing all of them to run at times across State lines and to do *some* interstate business. This was intended and supposed to make them such instrumentalities of interstate commerce as exempted them from liability for all State taxes, past or future, that had been or might be incurred for doing internal business.

The assumption upon which this evasion is based entirely overlooks the provisions of Section 8 of

[1] Trans., 31-33, 48-58.

the "Revenue Act" of 1887. While payment of the annual tax imposed upon any privilege by that Act gives the *right* to the person so paying to exercise that privilege for an entire year, yet the *liability* for the tax does not depend upon the exercise of the privilege for any specific length of time.

"Any and all parties, firms, or corporations" exercising a privilege must pay the prescribed tax, "whether they make a business of it or not."

A single trip over the line would render the company liable for the tax. Possibly it has rendered itself liable for taxes on more cars than were necessary by this attempted evasion of the law.

The provisions of the eighth section of said Act are not unjust. They are necessary for the protection of the honest tax-payer as well as for the State's protection. They make discrimination and evasion impossible. Every one who exercises a privilege to any extent is rendered liable for tax. All persons can avoid payment of the tax by refraining from engaging in the business upon which it is imposed.

The practice resorted to by the appellee company, if adopted in good faith, would not have excused it from payment of taxes. Much less can it have that effect when resorted to for the fraudulent purpose of evading payment of taxes.

Attempted evasions of this character have received the emphatic condemnation of this Court.

In *Shotwell* v. *Moore*, 129 U. S., 590, it appeared that Shotwell sought to evade State taxation of his funds on deposit in bank by converting them into "greenbacks" just before they should have been assessed under the State laws.

A statute of the State had been passed to prevent evasions of this character by giving to the tax-payer exemption upon his non-taxable securities of the Government in proportion to the time he had held them.

This law was declared constitutional.

Of this transaction, the Court said:

It does not need the finding of the Court below as a fact to show that this was an evasion, and a discreditable one, of the taxing laws of the State, if it could be made successful. It is, therefore, urged that on this ground alone—the illegal purpose for which the transactions were made in bank—the Court should hold the plaintiff in error liable to taxation for the amount thus covered. Several decisions on this subject by State Courts holding this view are cited in the brief of counsel. They are directly in point, and relate to attempts of precisely the same character to effect a similar evasion of taxation on property otherwise liable thereto.

Among these are *Holly Springs Sav. and Ins. Co.* v. *Marshall County*, 52 Miss., 281; *Jones* v. *Seward County*, 10 Neb., 154; and *Poppleton* v. *Zamhill County*, 8 Oreg., 337. From the latter case we quote the following language:

"If a tax-payer, having a large amount of notes and mortgages, in order to escape the payment of taxes on the same, borrows a sum of money of a person residing out of the county, and deposits with his creditor such notes and mortgages, for the purpose of avoiding the payment of taxes on the same, such

notes are taxable in the county where such tax-payer resides; and such deposit or transfer is a fraud on the revenues of the county."

And this Court, in *Mitchell* v. *Leavenworth County*, 91 U. S., 206, denounces conduct precisely similar to that of the plaintiff in error in this case, in the following language:

"United States notes are exempt from taxation by or under State or municipal authority; but a court of equity will not knowingly use its extraordinary powers to promote any such scheme as this plaintiff devised to escape his proportionate share of the burdens of taxation. His remedy, if he has any, is in a court of law."

This language is applicable to the conduct of the appellee company in this case.

The company is liable upon parlor-cars as well as upon sleeping-cars.

While the tax is imposed upon "sleeping-car companies," it is not laid for the use of sleeping-cars only, but upon the use of such *cars* as are commonly employed by such companies.

Are cars that ran interstate, but engaged indiscriminately in internal as well as interstate business, subject to this tax?

The tax, it should be borne in mind, is not laid *upon the car or its value.*

It is a "*per car*" tax—that is, a tax upon business in proportion to the number of cars employed in it.

Another fact should not be forgotten. The two classes of commerce—internal and interstate—are distinct and separable in their very natures. The appellee company could have engaged in one or both, either or neither, at its own option.

It could have used any particular car in one, either, or both classes of commerce as it chose.

For the purposes of taxation the separation between internal and interstate business must be made, as we have seen in another connection, by the tax-payer himself. (*See ante, pp.* 16–19.)

Unquestionably the internal business done by these cars was sufficient to render the company liable for the prescribed tax for their use, unless the fact that the same cars engaged concurrently in interstate business protects them.

The liability for the tax attaches under the statute upon any, the slightest, exercise of the taxable privilege, whether the company made "a business of it or not."

If the fact that the cars carried interstate passengers concurrently will exempt them from tax for carrying passengers wholly within the State, then it can make no difference in what proportions its business is internal and interstate.

The State cannot lay the slightest burden of this character upon the smallest portion of interstate

business, and therefore one interstate passenger to the car would be sufficient for all purposes of protection from State taxes.

This presents but another and more dangerous form of evasion of the tax-laws of the State.

If the principle contended for by the appellee company be correct, then the question of its taxation for doing internal business will depend wholly upon its own option and not to any extent upon the law.

It can evade not only this statute, but any statute the State can pass, by ingeniously commingling interstate with internal business—a thing that is not made necessary in this case by the terms of the statute.

The appellee company charges in its bill that this tax is one that discriminates in favor of the railroads employing sleeping-cars upon their lines.[1]

This is not true in law or fact. The eighth section of the Act makes all liable for the tax who exercise the taxable privilege. The railroads have, in fact, paid this tax wherever they have subjected themselves to it. Railroads become sleeping-car companies under this Act when they engage in business proper only to the latter.

Railroad v. State, 9 Lea (Tenn.) Rep., 218.

[1] Trans., 8–9.

If the appellee's contention can be sustained, then the statute discriminates against railroads, and in favor of the Pullman Company. The latter can compete with the railroads and pay no tax at all.

Upon another principle this tax can be sustained. The Pullman Company is a non-resident corporation. It may be conceded to the fullest extent that it is entitled to enter the State of Tennessee and engage there in purely interstate business, without the consent of that State, or even over her objection. Certainly no more than this can be claimed for that company. But the Pullman Company's rights stop here. Without the consent of the State of Tennessee, express or implied, it cannot engage in any other than interstate business, however convenient it may be for the company to engage in that other business or inconvenient for it not to do so.

It has no power to draw to itself the right to engage in other and distinct kinds of business by intermingling them, unnecessarily or fraudulently, with its interstate business.

The State had the right to exclude said company entirely from the internal business of the State, or to admit it upon hard or easy terms, as she chose. The State had the right, in prescribing terms for its admission, to discriminate against it and in favor of its own corporations.

These propositions are well supported by the decisions of this Court.

Paul v. Virginia, 8 Wall., 168.
Liverpool & London L. & F. Ins. Co. v. Oliver, 10 Wall., 566.
Ducat v. Chicago, Id., 410.
Cooper Mfg. Co. v. Ferguson, 113 U. S., 727.
Doyle v. Continental Ins. Co, 94 U. S., 535.

The terms imposed by the statutes of Tennessee upon the foreign company are the same as those imposed upon resident citizens and corporations. There is no discrimination whatever.

Under such circumstances it would be a glaring injustice to allow the non-resident company engaging in internal business, to escape taxes, while the resident is compelled to bear all the burdens of government.

The State should not be compelled to discriminate against her own citizens, and to burden them for the protection she affords the non-resident.

To place the State in such a dilemma is to compel her to abandon this entire subject of taxation, though clearly within her exclusive jurisdiction, or to turn this class of internal business over to non-residents.

The case of *Leloup* v. *Port of Mobile*, 127 U. S., 640, is not an authority against appellant's contention.

The tax in that case was one levied broadly "on

telegraph companies." No unit or measure for separation of interstate and internal business is named in the ordinance. Had there been a clause fixing the tax at a specified amount on each message, the ordinance would have been sustained. (*See ante, p.* 17–19.)

It laid a *gross amount* upon the *entire business*, as the ordinance was construed by the State Court, and therefore *necessarily* affected interstate commerce.

It is not a case, like this one, where internal and interstate commerce are separable under the statute.

The cases of *Pickard* v. *Pullman Southern Car Co.*, 117 U. S., 34–51, and *State of Tennessee* v. *Pullman Southern Car Co.*, 117 U. S., 51, 52, involved the construction of Tennessee statutes, similar in some respects, and materially different in others, from that under which the taxes are claimed in this case.

Those cases construed Acts of that State passed in 1877 and 1881,[1] which declared "the *running and using* of sleeping-cars or coaches on railroads in Tennessee, not owned by the railroad upon which they are run or used * * * to be a privilege," and required "the companies *owning and running or using* said cars or coaches to report," on the first

[1] Acts 1877, Ch. 16; 1881, Ch. 149.

of May of each year, to the Comptroller and pay taxes on the cars.

The company conceded its liability in those cases for tax on all cars that had engaged exclusively in internal commerce, but contested its liability for taxes on cars that had done a mixed internal and interstate business. Under those statutes the company was not held for taxes on the latter class of cars.

That tax was placed upon "the *running and using* of sleeping-cars."

This means something more than a mere occasional use of the cars. It means a continued use or running. The facts of those cases showed that the constant and continued use and running of the cars was to carry interstate commerce, and that the internal business done was occasional only, and bore "an inconsiderable proportion" to the interstate business. "The *running and using*" of the cars which was declared the taxable privilege, was for interstate and not for internal commerce, and the tax was therefore upon the former.

The occasional internal business done would not have rendered the company liable for tax under those statutes, even if it had done none other.

There was then no such provision as that found in Section 8 of "Revenue Act" of 1887, making

all liable for taxes who exercise a privilege, "whether they make a business of it or not."

The insertion of this last clause in the Act of 1887 indicates that one must, prior to that Act, have made "a business of it," in order to render himself liable for the exercise of a privilege.

It is sufficient to say those cases construed a very different statute from that now under consideration.

The suggestion that cars must be treated as being engaged in interstate business because they are run on lines of railway that reach beyond the State needs only to be mentioned.

If that were the correct test, then there could be little, if any, internal commerce. Most railroads are now parts of great systems traversing several States.

The conclusion on this point is, that the Pullman Company is liable for taxes on both of the classes of cars named.

III.

The allegations that the tax enjoined was unequal and discriminative in its operation, and therefore prohibited by Article II., Section 28, *of State Constitution; and that it was "unjust, oppressive, and exorbitant," are not true in fact nor tenable in law.*

These are not Federal questions, and might be dismissed with that suggestion.

But the unjust and prejudicial character of these charges calls for an answer.

The fact has been entirely overlooked by this contention that this is a *privilege* tax, not a *property* tax. The Constitution of the State requires that taxes on *property* shall be equal and uniform, and that no one species thereof shall be taxed higher than another of the same value. But in the same connection it is provided: "But merchants, peddlers, and privileges shall be taxed in such manner as the Legislature may, from time to time, direct."

Chief Justice Nicholson, delivering the opinion of the Court in *Jenkins* v. *Ewin*, 8 Heis. (Tenn.) Rep., 477, 478, used the following language in construing this clause of the State Constitution:

> This language would seem, at first view, to confer upon the Legislature the power to tax merchants, peddlers, and privileges. Its true object, however, was to indicate with distinctness that the power to tax merchants, peddlers, and privileges, was not to be understood as inhibited by the restriction as to the taxation of property. Its meaning is, that although in taxing property the Legislature is forbidden to tax it except according to its value, yet as to merchants, peddlers, and privileges, the Legislature is not to be restricted, but may exercise the taxing power without restriction either as to the amount or as to the manner or mode of exercising the power. The word "but" is significant of the purpose intended to be accomplished; it indicates that what follows is an exception to that which had gone before and is not to be controlled by it.
>
> The words, "in such manner," used in this clause have no other significance than to express with more distinctness and empha-

sis that the power of the Legislature to tax merchants, peddlers, and privileges was unlimited and unrestricted, and might be exercised in any manner and mode in their discretion. * * * This clause has no reference whatever to the taxation of property. It is confined to the power to tax persons engaged in the business of merchandising and peddling, and those enjoying privileges. It is not imperative upon the Legislature, requiring them to tax these occupations or persons, but it is left to the Legislature to exercise the power or not as, in their wisdom, sound policy may dictate.

The power of the Legislature to *create* "privileges" is equally absolute and unlimited with its power to *tax* them.

A "privilege" is whatever the Legislature chooses to tax as such.

State v. Schlier, 3 Heis., 281.
French v. Baker, 4 Sneed, 193.
Mabry v. Tarver, 1 Hum., 93.
Columbia v. Guest, 3 Head, 414.
Kurth v. State, 86 Tenn., 134.

Therefore if the tax was unequal and discriminative the Legislature had the constitutional power to make it such.

If it were "unjust, oppressive, and exorbitant" in the opinion of the Court, the Legislature had the power to make it what it chose. To the wisdom of the Legislature, and not to that of the Courts, the State Constitution has confided the decision of these questions.

The Federal Courts can afford no relief against

a constitutional State tax "however unjust, oppressive, and onerous."

Kirtland v. Hotchkiss, 100 U. S., 491.
Memphis Gas-light Co. v. Shelby County Taxing Dist., 109 U. S., 398.

But this tax is not a discriminative one.

The eighth section of the "Revenue Act" of 1887 makes discrimination impossible. The railroads are not exempt from its operation, but have paid this tax.

The Pullman Company seeks a construction of the Act which would make it discriminative in its own favor.

It cannot be said with truth that the tax is "unjust, oppressive, and exorbitant."

No one is compelled to incur it.

No one need engage in the business upon which it is laid, unless he chooses to do so. He knows in advance what tax he will be required to pay. If he can't pay the tax, he should not exercise the privilege upon which it is laid.

The State fixes the price of its privileges, but compels no one to purchase.

This Pullman Company, least of all, should urge this objection.

This tax is the only condition imposed by the State upon its admission to do internal business.

It could have been excluded entirely. It is accorded the same rights as residents, and upon the same terms.

It pays no other tax whatever to the State of Tennessee.

It derives from business done within that State, and protected by its laws, over $500,000 annually.

Its cars earn an average of $5,000 per annum each.

If it cannot afford to pay the tax that resident citizens have paid for exercising the same privilege, then it should retire from the internal commerce of the State, and leave it to those who pay the taxes prescribed for the privilege of carrying it on.

IV.

The remedy by injunction is not allowable in this cause. Because—

(1) *No sufficient grounds therefor are averred in the bill.*

(2) *For attempted evasion of the tax-laws of the State complainant should be repelled from a court of equity.*

(1) *There is no sufficient ground for injunction stated in the bill.*

An allegation that a tax is illegal and unjust af-

fords no reason to enjoin its collection. For such case the remedy is at law.

State Railroad Tax Cases, 92 U. S., 575.
Dows v. Chicago, 11 Wall., 108.
Union Pacific Railway Co. v. Ryan, 113 U. S., 516.

In *Dows* v. *Chicago*, a tax upon shares of stock in a national bank had been enjoined because of its illegality.

The Court, speaking through Mr. Justice Field, said:

The illegality of the tax and the threatened sale of the shares for its payment constitute, of themselves alone, no ground for such interposition. There must be some special circumstances attending a threatened injury of this kind, distinguishing it from a common trespass and bringing the case under some recognized head of equity jurisdiction before the preventive remedy by injunction can be invoked. It is upon taxation that the several States chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers upon whom the duty is devolved of collecting the taxes may derange the operations of government, and thereby cause serious detriment to the public.

After averring the illegality of the taxes, the bill in this cause forecasts the deplorable consequences that would result from enforcing their collection, in the following language:

Thereby the traveling public will be discommoded, the carriage of passengers interstate will be prevented, your orator and said railroad companies may become harassed by many suits for damages by passengers for not furnishing them the accommoda-

tions they contracted for, the credit and reputation of your orator for furnishing comfortable accommodations, which credit and reputation are of great value to it, and have been established by strict attention to business and at great expense and trouble for many years, will be broken up, and the good will of said business greatly impaired, and thereby your orator will suffer great and irreparable injury.

Do these allegations make a case of irreparable injury? Are the facts averred true? Would the consequences stated result from an effort to collect these taxes? Is there no adequate remedy, except injunction, for the apprehended injury?

If there is such remedy, either at law or in equity, it must be pursued. Courts of equity will not grant *extraordinary* process where there is an adequate remedy at law, or by its own ordinary process. If there be such remedy, the threatened injury may not be termed, in any just sense, "irreparable." If reasonable means exist, or have been provided, whereby the party can avert the threatened injury, he must do so; and if he stubbornly refuse to adopt the means, and voluntarily incur the damage or injury, he cannot complain that it is "irreparable."

If some of the cars of the Pullman Company had been seized for these taxes, would or need it have resulted in any serious detriment to the company or the traveling public?

The cars could have been easily replaced. The company had almost unlimited facilities and wealth.

Nothing of an "irreparable" nature could have occurred.

But an easy method has been provided by statute in Tennessee for said company's escape from all injury that could result from the enforcement of said taxes, even if they were illegal.

Under that statute the tax-payer who contests the legality of any tax is required to pay its amount to the collector under protest, and to sue the collector for its recovery. If he succeeds, ample provision is made for repayment to him of this amount, with interest.

The statute declares "that there shall be no other remedy in any case of the collection of revenue or attempt to collect revenue illegally" than that therein provided; and that "no writ for the prevention of the collection of any revenue claimed, or to hinder and delay the collection of the same, shall in anywise issue, either injunction, supersedeas, prohibition, or any other writ or process whatever."[1]

Can it be said that the remedy provided by this statute is not adequate and reasonable?

It requires but a temporary loan of the amount of the disputed tax by the tax-payer to the State, to be repaid, with interest, if the tax prove illegal.

Is there any "irreparable injury" in that? The presumption is that the tax is legal until the courts have determined to the contrary. Pending

[1]Acts, 1873, Ch. 44.

the controversy over its legality, either the State or the tax-payer must hold the amount in dispute. Is there any thing unreasonable in a law that provides that the *prima facie* title of the State shall prevail until a decision is reached?

This Tennessee statute furnishes the rule of practice in the State courts with reference to disputed taxes.

Railroad v. The State, 8 Heis., 804.
Nashville v. Smith, 86 Tenn., 213.

Similar statutes have been repeatedly upheld by this Court.

Tennessee v. Sneed, 96 U. S., 69.
Keith v. Clerk, 97 U. S., 454.
S. Carolina v. Galliard, 101 U. S., 433.
Antoni v. Greenhow, 107 U. S., 769.
Moore v. Greenhow, 114 U. S., 338.

In *Tennessee* v. *Sneed*, this Court passed upon the State statute now under consideration, saying:

> It requires the contestant to pay the amount fixed by the Government, and gives him the power to sue the collector and in such suit to test the legality of the tax. There is nothing illegal or even harsh in this. It is a *wise and reasonable precaution* for the security of the Government. No Government could exist that permitted the collection of its revenues to be delayed by every litigious man or every embarrassed man, to whom delay was more important than payment of costs.

Can it be said with truth of a statute thus characterized by this Court as "a wise and reasonable precaution," that "irreparable injury" may result from its legal operation?

The Federal Government has prescribed a sim-

ilar practice where the legality of its taxes is disputed, and this Court has approved that statute.

Snyder v. Marks, 109 U. S., 189.

There is no pretense that the Pullman Company would suffer the slightest inconvenience from having to pay the taxes in dispute and await its recovery. It realized over $500,000 per annum from its Tennessee business alone.

The payment of the tax under protest would avert all the consequences and injury that the company apprehended.

The State statute does not affect the equitable jurisdiction of the Federal Courts in any other sense than would a party's dismissal of his suit, or payment of the debt sued for. It simply removes the necessity for a suit, but does not affect the Court's jurisdiction. While the State statute is not absolutely binding upon the Federal Courts, it will not be disregarded by them without some sufficient reason.

It should receive the same construction in both jurisdictions, if possible; otherwise those tax-payers who can enter the Federal Courts will receive a different measure of relief from that administered by the State Courts.

The causes averred for injunction are insufficient.

(2) *For attempted evasion of the tax-laws of the State, the appellee should be repelled by a court of equity.*

Mitchell v. Leavenworth County, 91 U. S, 206.

G. W. PICKLE,
Attorney-general for State of Tennessee.

J. W. ALLEN (Comptroller of the State of Tennessee), R. D. MARSHALL (Sheriff), and THOMAS K. HOBSON (Deputy Sheriff of Davidson County, Tennessee), Appellants,

vs.

PULLMAN PALACE CAR COMPANY.

No. 1382.

STATEMENT.

This case differs in only two material points from the preceding one (1381).

(1) This case enjoins the tax for the year 1889, imposed by the "Revenue Act" of that year, which, so for as concerns sleeping-car companies, provides:

SEC. 4. *Be it further enacted*, That the rate of taxation on the following privileges shall be as follows (per annum):

* * * * *

SEC. 5. *Be it further enacted*, That the following corporations shall pay directly to the Comptroller's office the following taxes:

* * * * *

SLEEPING CAR COMPANIES.

(In lieu of all other taxes except *ad valorem* tax.)

Each company doing business in this State, for one or more passengers taken up at one point in this State and delivered at

anothor point in this State, and transported wholly within this State, per annum, $3,000.

SEC. 8. (Same as corresponding section of Act of 1887. (See *Ante* p. —.)

(2) In this case the Comptroller has issued distress warrant for the tax, which has been levied upon the sleeping-car "Wetumpka"—worth about $8,000—the property of the appellee company. The Sheriff has possession of this car and has advertised it for sale.

In all other material respects this case is identical with cause 1381.

Both causes were tried upon the same evidence.

ASSIGNMENT OF ERRORS.

The assignment of errors made in cause 1381 raises all questions relied upon in this case, and is adopted here, without repetition. (See pp. 8, 9, *Ante.*)

ARGUMENT.

This argument will be confined to the points of difference between this case and No. 1381. In other respects the argument in 1381 is referred to and relied upon.

I.

The "Revenue Act" of 1889 eliminates the question of construction that arose upon the act of 1887, by limiting its application and operation, in express and precise terms, to the internal business done by sleeping-car companies. It imposes the tax alone for "passengers taken up at one point in this State and delivered at another point in this State, and transported wholly within this State." This change of language in the Act of 1889 was intended to meet the objection made to the Act of 1887, that its language might be held to include

interstate commerce. If it be possible to define that internal commerce which is wholly within State jurisdiction and entirely beyond Federal control, this Act of 1889 has done that thing. If it be possible to disentangle internal from interstate business, that result is accomplished by this Act of 1889.

The intention to tax only internal business is made clear beyond reasonable doubt upon the language of this Act. If its language includes interstate as well as internal business, then the two must be "one and inseparable."

There are not, in the whole range of the English language, any words more appropriate to define internal business than those employed in the Act of 1889.

To hold this Act invalid as an infraction of the commerce clause of the Federal Constitution is to decide that the States cannot tax internal commerce at all. To deny that power to the States is to deny them the power to exist. To subject their power to tax internal subjects to Federal control or supervision, is to degrade them from the condition of statehood to that of mere counties.

The complaint that this tax is oppressive, and amounts to confiscation of the revenues derived by the company from its internal business is unavailing.

Under the State Constitution the Legislature has unlimited power and discretion with regard to the taxation of privileges. Under judicial decision in Tennessee, the Legislature may declare any business it chooses a privilege and tax it as such.

It is well settled by the decisions of this Court that a State has the right to exclude a foreign corporation from engaging in internal business within its borders.

Paul v. Virginia, 8 Wall., 168.
Ducat v. Chicago, 10 Wall., 415.
Pembina Con. M. & M. Co. v. Pennsylvania, 125 U. S., 181.

The power to exclude includes the power to impose any terms the Legislature chooses to prescribe for admission, however hard or oppressive those terms may be.

Taxes and penalties may be imposed at the will of the Legislature.

There is no compulsion upon any one to engage in the business upon which the tax is laid.

The Pullman Company was under no obligation to do an internal business at all. It could engage exclusively in its interstate business if it chose. It was under no obligation to furnish sleeping-cars for the internal travel in the State, and has never done so except to a very limited extent, and in accordance with its own will.

If this company were a resident of Tennessee

and doing only internal business, it would be unquestionably liable for this tax.

If, as a non-resident company, it confined its business to internal commerce, it is equally clear that it would be liable for this tax.

Can it create for itself an exemption from this tax by engaging concurrently in interstate business. If so, its will, and not that of the Legislature, determines the question of its liability to taxation.

This tax does not and cannot reach interstate business.

Can the company render the tax illegal by paying it out of revenues derived from interstate business?

If the company does not get sufficient revenues from its internal business to pay the tax, it should drop that branch of its business.

The escape from a losing business is to abandon it, not to evade the taxes laid upon it.

The purpose of the Legislature in passing the law is immaterial. The legal effect and operation of the statute are the material considerations affecting its validity.

Conceding that the Legislature intended to compensate for the loss of its former claim to tax in-

terstate business, by laying a heavier burden upon internal business, that affords no ground of objection to the statute. The loss of revenue in one direction must be compensated in some other. So long as the tax is laid entirely upon internal business, no reason for Federal interference can exist.

If the legislative intent were material, would it not be reasonable to suppose that the Act of 1889 was intended to prevent evasion of taxes, rather than to impose tax upon interstate business?

II.

The case made by the bill for an injunction is this: That the State of Tennessee claims an illegal tax of $3,000 against the Pullman Company; that a sleeping-car, "Wetumpka," worth $8,000, and the property of said company, has been levied on for said tax under a distress warrant; that it has been advertised for sale, and will be sold, if injunction is not granted; and that should that fail to satisfy the tax, other cars will probably be levied upon and sold.

The Pullman Company affects to apprehend the most direful consequences—"irreparable injury," if not utter ruin—from the effort of the State officials to collect this tax.

This is a most transparent pretense.

With immense wealth and an income from Tennessee alone of over $500,000 per annum, that company could have easily paid the tax under protest, and sued for its recovery. This would have saved it from all the apprehended consequences.

The company avers that it operated 1,400 cars.

How could the taking of a single car produce such utter confusion and prostration of its business as the company portrays in its bill?

The Court can see that there were no grounds, and that the Pullman Company knew that there were no reasons for any apprehension of irreparable injury, multiplicity of suits, or any other of the consequences which it affected to fear.

G. W. PICKLE,
Attorney-general for the State of Tennessee.

APPENDIX.

[Constitution of 1870.]

ARTICLE II.

SEC. 28. All property, real, personal, or mixed, shall be taxed, but the Legislature may except such as may be held by the State, by counties, cities, or towns, and used exclusively for public or corporation purposes, and such as may be held and used for purposes purely religious, charitable, scientific, literary, or educational, and shall except one thousand dollars' worth of personal property in the hands of each tax payer, and the direct product of the soil in the hands of the producer and his immediate vendee. All property shall be taxed according to its value, that value to be ascertained in such manner as the Legislature shall direct, so that taxes shall be equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value. But the Legislature shall have power to tax merchants, peddlers, and privileges in such manner as they may from time to time direct. The portion of a merchant's capital used in the purchase of merchandise sold by him to non-residents and sent beyond the State, shall not be taxed at a rate higher than the *ad valorem* tax on property. The Legislature shall have the power to levy a tax upon incomes derived from stocks and bonds that are not taxed *ad valorem*. All male citizens of this State over the age of twenty-one years, except such persons as may be exempted by law on account of age or other infirmity, shall be liable to a poll-tax of not less than fifty cents nor more than one dollar per annum. Nor shall any county or corporation levy a poll-tax exceeding the amount levied by the State.

(Acts of 1887.)

CHAPTER 1.

AN ACT to provide Revenue for the State of Tennessee, and the counties thereof.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the State tax on every one hundred dollars' worth of taxable property shall be forty-five cents for the year 1887, and for every subsequent year thereafter; thirty cents of which shall be for State purposes, and fifteen (15) cents for school purposes.

SEC. 2. *Be it further enacted*, That the several County Courts of this State be, and they are hereby, authorized and empowered to levy an annual county tax on every one hundred dollars' worth of taxable property, not exceeding the State tax, and exclusive of the tax for public roads and schools, and interest on county debts, and other special purposes; *Provided*, That no county in this State shall levy more than one privilege tax on merchants, and that not more in the aggregate than the privilege tax levied by the State.

SEC. 3. *Be it further enacted*, That all merchants shall pay *ad valorem* tax upon the average capital invested by them of forty-five cents on each one hundred dollars; thirty cents of which shall be for State purposes, and fifteen cents for school purposes, and a privilege tax of thirty cents on each one hundred dollars' worth of taxable property, ten cents of which shall be for school purposes and twenty cents for State purposes; *Provided*, That such privilege tax, without regard to the length of time they do business, shall in no case be less than five dollars, which five dollars is to be paid when the license is taken out, and in case of those whose privilege tax amounts to more than five dollars, the five dollars paid shall be a credit when the balance of the tax is paid.

SEC. 4. *Be it further enacted*, That the rate of taxation on the following privileges shall be as follows (per annum). Where the population is referred to it shall be controlled by and refer to the Federal census of 1880:

ARTISTS AND PHOTOGRAPHERS.

In cities, towns, and taxing districts of over 10,000 inhabitants, each, per annum	$50 00
In cities, towns, and taxing districts of 5,000 to 10,000 inhabitants, each, per annum	25 00
In cities, towns, and taxing districts of 3,000 to 5,000 inhabitants, each, per annum	15 00
In cities, towns, and taxing districts of 1,000 to 3,000 inhabitants, each, per annum	10 00
In cities, towns, and taxing districts of 1,000 inhabitants, each, per annum	6 00
In counties outside of incorporated cities, towns, or taxing districts	5 00
Persons (other than artists and photographers of this State) soliciting pictures to be enlarged outside of this State, each, per annum	10 00

ARCHITECTS, CIVIL AND MINING ENGINEERS.

Architects and civil and mining engineers	25 00

AUCTIONEERS.

In cities, taxing districts, or towns of 40,000 inhabitants or over, each, per annum	50 00
In cities, taxing districts, or towns of 30,000 to 40,000 inhabitants, each, per annum	40 00
In cities, taxing districts, or towns of 20,000 to 30,000 inhabitants, each, per annum	35 00
In cities, taxing districts, or towns of 10,000 to 20,000 inhabitants, each, per annum	25 00
In cities, taxing districts, or towns of 5,000 to 10,000 inhabitants, each, per annum	15 00
In cities, taxing districts, or towns of less than 5,000 inhabitants, each, per annum	10 00

AUCTION AND COMMISSION MERCHANTS.

The same as charged other merchants.

BANKS AND BANKING, AND INSURANCE COMPANIES DOING BANKING BUSINESS.

In cities, taxing districts, or towns of 40,000 inhabitants, or over, each, per annum	$600 00

In cities, taxing districts, or towns of 30,000 to 40,000 inhabitants, each, per annum	$500 00
In cities, taxing districts, or towns of 20,000 to 30,000 inhabitants, each, per annum	350 00
In cities, taxing districts, or towns of 10,000 to 20,000 inhabitants, each, per annum	250 00
In cities, taxing districts, or towns of 5,000 to 10,000 inhabitants, each, per annum	150 00
In cities, taxing districts, or towns of 5,000 inhabitants and under, each, per annum	100 00

BREWERS.

In counties of 60,000 inhabitants, or over, each, per annum	150 00
In counties of less than 60,000 inhabitants, each, per annum	100 00

BROKERS.

(Other than real estate or merchandise, and paying tax as bankers.)

In cities, taxing districts, or towns of 20,000 inhabitants, or over, each, per annum	$300 00
In cities, taxing districts, or towns of 10,000 to 20,000 inhabitants, each, per annum	200 00
In cities, taxing districts, or towns of less than 10,000 inhabitants, each, per annum	100 00

REAL ESTATE BROKERS AND AGENTS.

$25.00 and one per cent. on commissions, and they shall file a bond as required of merchants.

LAND STOCK COMPANIES.

Shall pay a tax of $25.00 and one per cent. per annum on all their commissions made, and shall be required to make quarterly reports to the County Court Clerk of the amount of sales made.

BILL POSTERS.

In cities, taxing districts, or towns of 15,000 inhabitants, or over, each, per annum	$40 00

BUTCHERS.

This includes all offices, stalls, and stores for the sale of fresh meat at retail.

In cities, taxing districts, or towns (or adjacent thereto) of 20,000 inhabitants, or over, each, per annum	$50 00
In cities, taxing districts, or towns (or adjacent thereto) of 10,000 to 20,000 inhabitants, each, per annum	30 00
In cities, taxing districts, or towns (or adjacent thereto) of 5,000 to 10,000 inhabitants, each, per annum	20 00
In cities, taxing districts, or towns (or adjacent thereto) of 1,000 to 5,000 inhabitants, each, per annum	10 00

No tax to be collected from butchers in towns of population of less than 1,000; *Provided*, That nothing in this section shall be construed to include farmers or producers who may sell their own products at wholesale or retail.

BOARDING HOUSES.

Kept for transient customers.

In cities, taxing districts, or towns of 20,000 inhabitants, or over, each room, per annum	$2 00
In cities, taxing districts, or towns of 5,000 to 20,000 inhabitants, each room, per annum	1 50
In cities, taxing districts, or towns of 2,000 to 5,000 inhabitants, each room, per annum	1 00
In cities, taxing districts, or towns of less than 2,000 inhabitants, each room, per annum	50

BILLIARDS.

See games.

CIGAR STANDS.

Charged as other merchants.

COTTON SEED OIL MILLS.

Shall pay on 2 press mill, per annum	20 00
Shall pay on 4 press mill, per annum	40 00

Shall pay on 5 press mill, per annum	$75 00
Shall pay on 6 press mill, per annum	150 00
Shall pay on 7 press mill, per annum.	225 00
Shall pay on 8 press mill, per annum	300 00
Shall pay on 9 press mill, per annum	350 00
Shall pay on 10 press mill, or over, per annum	500 00

COTTON COMPRESSES.

Tax as other property, and compresses pressing one bale and under 20,000 bales, per annum	75 00
20,000 and under 50,000 bales, per annum	100 00
50,000 and under 100,000 bales, per annum	150 00
100,000 and under 200,000 bales, per annum	200 00

And an increase in tax in proportion as the number of bales increases above 200,000 bales.

COMMERCIAL, MERCANTILE, OR MUTUAL PROTECTIVE AGENCIES.

In cities, taxing districts, or towns of 20,000 inhabitants, or over, on each office, per annum	$150 00
In cities, taxing districts, or towns under 20,000 inhabitants, on each office, per annum	100 00

COUNTY CERTIFICATES OR WARRANTS.

Dealers in not paying tax as bankers or brokers.

In cities, taxing districts, or towns of 20,000 to 40,000 inhabitants, or over, each, per annum	$100 00
In cities, taxing districts, or towns of 20,000 to 40,000 inhabitants, each, per annum	50 00
In cities, taxing districts, or towns of 5,000 to 20,000 inhabitants, each, per annum	25 00
In cities, taxing districts, or towns of less than 5,000 inhabitants, each, per annum	12 50

CIRCUSES AND EXHIBITIONS.

Circuses or exhibitions given by any portion of a circus, whether horses are used or not, each day and night, or day or night, each	150 00
Menageries, each day and night, each	150 00
Circuses and menageries combined, each day and night, or day or night, each	150 00

Side shows and other shows and concerts in connection with above, taxed separately under their appropriate heads if they charge a separate or additional entrance fee; sleight of hand and legerdemain, each day and night, or day or night, each	$10 00
Other exhibitions for profit (except circuses, menageries, theaters, etc.), except exhibitions purely for charitable purposes and those given by amateurs or home troupes, each day and night, or day or night, each	10 00
Per month	50 00

COAL AND COKE AGENCIES OR DEALERS.

In towns, cities, or taxing districts of 30,000 inhabitants, or over, each person, firm, agency, or corporation in each county, per annum	50 00
In towns, cities, or taxing districts of over 5,000 and up to 30,000 inhabitants, each person, firm, agency, or corporation in each county, per annum	25 00
In towns, cities, or taxing districts of less than 5,000 inhabitants	Nothing

*COAL OIL AND ILLUMINATING OIL COMPANIES.

Companies, persons, agencies, or firms selling coal or illuminating oils to the trade, or otherwise, manufactured in this State or elsewhere, in counties including cities, taxing districts, or towns of 40,000 inhabitants, or over, each, per annum	$ 1,000 00
In counties, including cities, towns, or taxing districts from 20,000 to 40,000 inhabitants, each, per annum	500 00
In counties including cities, towns, or taxing districts from 10,000 to 20,000 inhabitants, each, per annum	200 00
In counties including cities, towns, or taxing districts from 5,000 to 10,000 inhabitants, each, per annum	100 00
In counties containing cities, towns, or taxing districts of 1,000 to 5,000 inhabitants, each, per annum	50 00
In counties containing cities, towns, or taxing districts of less than 1,000 inhabitants	Nothing

*This clause has been declared unconstitutional.

Provided, That this clause shall not apply to merchants, etc., and retail dealers selling to consumers only; *And provided further*, It shall not apply to manufacturing firms, corporations, or their representatives, now engaged in the manufacturing of oils, greases, and lubricants, or local manufacturing enterprises in this State.

DISTILLERS OF WHISKY AND BRANDY.

Distilleries with a capacity of 30 barrels and over per day, per annum	$150 00
Distilleries with a capacity of from 20 to 30 barrels per day, per annum	100 00
Distilleries with a capacity of from 10 to 20 barrels per day, per annum	75 00
Distilleries with a capacity of from 5 to 10 barrels per day, per annum	50 00
Distilleries with a capacity of from 2 to 5 barrels per day, per annum	5 00

Distillers who manufacture for their own use, and those who sell to consumers, and have paid the State tax levied on wholesale liquor dealers, shall not be required to pay this tax; *Provided*, Said distilleries shall be in operation.

EATING HOUSES.

All public eating houses, except for religious or charitable purposes, each, per annum	$5 00

ELECTRIC LIGHT COMPANIES.

Electric light companies shall be taxed at $1.00 per arc light, per annum, to be paid by the company.

FEES.

All parties, banking associations, or brokers, or their agents, buying, or attempting to buy, the fees of any officer or witness accruing in any of the courts of this State, shall pay tax as follows:

In counties of 40,000 inhabitants or over, each, per annum	$500 00
In counties of less than 40,000 inhabitants, each, per annum	300 00

FERRIES.

Except those run by hand, with oars, when the landings in this State are at or within five miles of taxing districts, cities, or towns.

Cities, towns, or taxing districts of 10,000 inhabitants or over, each, per annum	$50 00
At or within five miles of cities, taxing districts, or towns of 5,000 to 10,000 inhabitants, each, per annum	30 00
At or within five miles of cities, taxing districts, or towns of 1,000 to 5,000 inhabitants, each, per annum	20 00
At or within five miles of cities, taxing districts, or towns of less than 1,000 inhabitants, each, per annum	15 00
All ferries taxable under this Act, more than five miles from a town, city, or taxing district	10 00

FRUIT STANDS.

Taxed as other merchants.

FUTURES.

Each person, firm, company, or corporation dealing therein, and each branch or agency of each firm, company, or corporation, per annum	1,000 00

GAS COMPANIES.

In cities, taxing districts, or towns of 40,000 inhabitants or over, per annum	600 00
In cities, taxing districts, or towns of 20,000 to 40,000 inhabitants, per annum	500 00
In cities, taxing districts, or towns of 10,000 to 20,000 inhabitants, per annum	200 00
In cities, taxing districts, or towns of 5,000 to 10,000 inhabitants, per annum	100 00
In cities, taxing districts, or towns of 500 and less than 5,000 inhabitants, per annum	25 00

GAMES.

Billiard tables, pool tables, flying jennies, bagatelle tables, Jenny Lind tables, and ten-pin alleys, roller coasters, on each, in cities, taxing districts, or towns of 20,000 inhabitants or over, each, per annum.....	$30 00
In cities, taxing districts, or towns from 10,000 to 20,000 inhabitants, each, per annum.....	25 00
In cities, taxing districts, or towns of 5,000 to 10,000 inhabitants, each, per annum	20 00
In cities, taxing districts, or towns of 2,000 to 5,000 inhabitants, each, per annum	15 00
In cities, taxing districts, or towns of less than 2,000 inhabitants, each, per annum	10 00
In counties outside of towns, cities, and taxing districts, each, per annum.....	10 00
All devices used by persons as a source of profit to themselves, such as throwing balls at wooden figures, or any other object, throwing rings, or any other device of like nature.....	10 00

And said tax shall be paid by every saloon-keeper or other person who keeps any of the above in connection with his or her business, and for the use of the public, whether the same is charged for or not.

HOTELS AND TAVERNS.

Each room, except two, per annum.....	$2 00

Hotels kept at places for summer resort to be taxed as other hotels, but may be paid monthly.

HUCKSTERS.

Taxed as other merchants.

Persons who travel around their counties collecting up marketing, chickens, butter, eggs, rags, fruits, etc., and such things as they carry to market, are not subject to a tax either as hucksters or peddlers.

ICE—DEALERS IN.

Each person, or firm, or corporation, selling imported or home ice to the trade—	
In cities, taxing districts, or towns of 40,000 inhabitants or over, per annum...	$100 00

In cities, taxing districts, or towns of 20,000 to 40,000 inhabitants, per annum	$75 00
In cities, taxing districts, or towns of 10,000 to 20,000 inhabitants, per annum	50 00
In cities, taxing districts, or towns of 5,000 to 10,000 inhabitants, per annum	30 00
In cities, taxing districts, or towns of 2,000 and less than 5,000 inhabitants, per annum	20 00
In cities, taxing districts, or towns of 1,000 and less than 2,000 inhabitants, per annum	5 00
Each person or firm retailing or selling ice from any car running upon any railroad in this State (in lieu of all other taxes) to be paid in any county in the State through which the car runs, and in which such sale or sales may be made	50 00
Retail ice dealers running wagons in connection with their business (but in towns of less than 1,000 inhabitants, no tax shall be charged to retail dealers in ice)	10 00

INSURANCE AGENTS.

Each agent of mutual or assessment insurance companies, fire, accident, or life, in each county in which they do business, per annum, to be collected by the County Court Clerk	10 00

But nothing in this Act shall be construed so as to levy a tax upon insurance agents who are legally licensed to do business by the Insurance Commissioner.

ITINERANTS.

All persons, whether physicians or not, either selling medicines or advertising their services, or both, by appearing on the streets, or elsewhere, and making harangues for the purpose of advertising as aforesaid, in each county, per annum	$100 00

INTELLIGENCE OFFICES.

Keepers of each, per annum	40 00

LIGHTNING-ROD DEALERS.

Each, per annum, in each county in which they do business	100 00

LIVERY AND FEED STABLES.

On each stall, per annum	$ 1 00

LIQUOR DEALERS.

Wholesale, each, per annum, and in addition taxed as other merchants	200 00
Retail, taxed as other merchants, and in addition shall pay as follows:	
In cities, taxing districts, or towns of 5,000 inhabitants or over, per annum	200 00
At any place not a city, taxing district, or town, or any city, taxing district, or town of less than 5,000 inhabitants, per annum	150 00

Persons selling liquor in quantities of a quart or more, except manufacturers who sell to be sold again, are wholesale dealers, and persons selling in smaller quantities than a quart are retail dealers; and the above tax on liquor dealers applies to all druggists, except in case of wine for sacramental purposes and alcohol for domestic purposes. Persons keeping a bar on steam-boats, flat-boats, or other vessels or water crafts, shall pay a tax of $300 per annum in lieu of all other taxes, to be paid in any county they may elect.

LITIGATION.

Each suit in law or equity, including applications for partition, to be paid by the unsuccessful party, except in case of partition	$2 50
Each indictment or presentment	5 00
Each appeal to Supreme Court in criminal cases, if defendant is unsuccessful	7 50
Each appeal on writ of error or *certiorari* from a Circuit or Chancery Court to Supreme Court	5 00
Each appeal or *certiorari* from a Justice of the Peace	2 00
Each case submitted under the small offense law	2 00
Each case before a Mayor or Recorder's Court, or before any Police Court having jurisdiction of offenses in any taxing district in the State, provided such tax can be collected in money	1 00

(And said officer collecting said tax on litigation, and in said causes, and under the small offense act, and the officer holding the Police Court in the towns and cities in the taxing districts of this State, shall report the amount collected by them every ninety days, and pay the same over to the Clerk of the County Court, taking duplicate receipts, one of which shall, without delay, be forwarded to the Comptroller.) No tax shall be paid on application for dower or homestead, and no tax on applications of guardians to sell property for maintenance of wards or to entrench on property of wards, and no tax on suits brought by State, county, or municipalities to collect taxes.

LUMBER DEALERS.

Lumber dealers who buy and sell sawed lumber, and dealers in saw-logs and staves, must pay privilege and *ad valorem* tax as merchants.

MARRIAGE LICENSE.

Each (for school purposes, and the tax to be kept in county)	$ 1 00

PEDDLERS.

(Buying or selling for profit, or both.)

If on foot, in each county, each, per annum	10 00
If with horse or vehicle, in each county, each, per annum	20 00
If with more than one horse, for each additional horse, in each county, each, per annum	8 00
Of patent medicines and nostrums, if on foot or horse, in each county, each, per annum	40 00
Of patent medicines and nostrums, if with horse and wagon, in each county, each, per annum	100 00

PARKS.

Public parks (where visitors are charged an admission fee), each, per annum	100 00
Base-ball parks (where an admission fee is charged), per annum	150 00

POOL-SELLING.

Each person, company, firm, or corporation engaged therein, each, per annum	300 00

PAWN-BROKERS.

In cities, towns, or taxing districts of 40,000 inhabitants, or over, each, per annum	$100 00
In cities, towns, or taxing districts of 30,000 to 40,000 inhabitants, each, per annum	80 00
In cities, towns, or taxing districts of 20,000 to 30,000 inhabitants, each, per annum	70 00
In cities, towns, or taxing districts of 10,000 to 20,000 inhabitants, each, per annum	50 00
In cities, towns, or taxing districts of 5,000 to 10,000 inhabitants, each, per annum	30 00
In cities, towns, or taxing districts under 5,000 inhabitants, each, per annum	20 00
In counties not in towns, cities, or taxing districts	20 00

And in addition they shall pay a tax as other merchants.

PLUMBERS AND GAS FITTERS.

Charged as merchants.

RACE-TRACKS.

Tracks of one mile or more, each, per annum	$200 00
Tracks of half mile, each, per annum	150 00
Tracks of quarter mile, each, per annum	100 00
Book-makers on horse-races, each agent, firm, or person, corporation, or firms in each county, each, per annum	25 00

RAILROAD TICKET AGENTS AND SCALPERS.

Except agents actually on line of railroad.

In cities, towns, and taxing districts of over 20,000, per annum	50 00
In cities, towns, and taxing districts under 20,000, and in counties, per annum	20 00

RESTAURANTS.

Same as hotels on each room, and in addition as follows:

In cities, taxing districts, or towns of 20,000 inhabitants, or over, each, per annum	$50 00
In cities, taxing districts, or towns of 10,000 to 20,000 inhabitants, each, per annum	40 00

In cities, taxing districts, or towns of 5,000 to 10,000 inhabitants, each, per annum	$25 00
In cities, taxing districts, or towns of 2,000 to 5,000 inhabitants, each, per annum	15 00
In cities, taxing districts, or towns of less than 2,000 inhabitants, each, per annum	10 00
In counties not in towns, cities, or taxing or taxing districts	10 00

SAMPLE SELLERS.

Persons selling goods to consumers by sample, or taking orders from consumers by sample, or taking measures, in each county, each, per annum	10 00

SECURITIES.

Dealers in (other than brokers or bankers).	
In cities, towns, or taxing districts of 20,000 inhabitants or over, each, three cents on each dollar employed, but in no instance to be less than, per annum	50 00
In cities, towns, or taxing districts under 20,000 inhabitants, and in counties not in cities, towns, or taxing districts, one and one-half cents on each dollar employed, but in no instance less than, per annum	20 00

SELLING FRUIT TREES AND SHRUBBERY.

Each person, company, or firm, selling fruit trees or shrubbery, for each agent, in each county, per annum	10 00

SELLERS OF GOODS AT PUBLIC OUTCRY.

(Other than auctioneers.)	
Each person, or firm, in each county, per annum	15 00

STOCKS AND BONDS.

Dealers in (other than brokers and bankers). Tax same as dealers in securities.

SHAVING NOTES.

Taxed same as dealers in securities and stocks and bonds.

STREET-CAR COMPANIES.

In cities, towns, or taxing districts of 20,000 inhabitants, or over, each, per annum	$350 00
In cities, towns, or taxing districts of less than 20,000, or over 10,000 inhabitants, each, per annum	150 00
In cities, towns, or taxing districts of under 10,000 inhabitants, each, per annum	50 00

SEWING MACHINES—DEALERS IN OR AGENTS.

Selling sewing machines, either directly or by sample, in counties of 40,000 inhabitants, or over, in each county, each agent and dealer, per annum	20 00
Selling sewing machines, either directly or by sample, in counties of under 40,000 inhabitants, in each county, each, per annum	10 00

(Merchants selling sewing machines upon which they pay a tax as on other merchandise, not to pay the tax required of sellers by sample; *Provided*, They sell the same in any one established business place.)

SKATING RINKS.

In cities, taxing districts, or towns of 20,000 inhabitants, or over, each, per annum	$150 00
In cities, taxing districts, or towns of 10,000 to 20,000 inhabitants, each, per annum	75 00
In cities, taxing districts, or towns of 5,000 to 10,000 inhabitants, each, per annum	40 00
In cities, taxing districts, or towns of less than 5,000 inhabitants, each, per annum	20 00
In counties not in cities, towns, or taxing districts	40 00

SALE STABLES.

Each stall, per annum	1 00

SHOOTING-GALLERIES AND STANDS.

Each, per annum	20 00

STOCK-YARDS AND DEALERS IN STOCK.

Each pen, per annum	10 00

THEATERS.

In cities, taxing districts, or towns of 20,000 inhabitants, or over, each, per annum	500 00

In cities, taxing districts, or towns of 10,000 to 20,000 inhabitants, each, per annum	$300 00
In cities, taxing districts, or towns of 5,000 to 10,000 inhabitants, each, per annum	150 00
In cities, taxing districts, or towns of 3,000 to 5,000 inhabitants, each, per annum	75 00
In cities, taxing districts, or towns of 1,500 to 3,000 inhabitants, each, per annum	25 00
In cities, taxing districts, or towns of less than 1,500 inhabitants, each, per annum	20 00

VARIETY THEATER ESTABLISHMENTS.

Each, per annum	500 00

WATER COMPANIES.

In cities, taxing districts, or towns of 40,000 inhabitants, or over, per annum	600 00
In cities, taxing districts, or towns of 20,000 to 40,000 inhabitants, per annum	400 00
In cities, taxing districts, or towns of 10,000 to 20,000 inhabitants, per annum	200 00
In cities, taxing districts, or towns of 5,000 to 10,000 inhabitants, per annum	100 00
In cities, taxing districts, or towns of 500 and less than 5,000 inhabitants, per annum	50 00

TELEPHONE COMPANIES.

Each telephone box, per annum	50

TELEGRAPH COMPANIES.

For each office or station in a city, taxing district, or town of 40,000 inhabitants, or over, per annum	500 00
In a city, taxing district, or town of 20,000 inhabitants, per annum	300 00
In a city, taxing district, or town of 10,000 to 20,000 inhabitants, per annum	150 00
In a city, taxing district, or town of 5,000 to 10,000 inhabitants, per annum	50 00
In a city, taxing district, or town of 2,000 to 5,000 inhabitants, per annum	10 00

VEHICLES.

If run for profit within the limits of this State, without reference to the residence of the owner, drays, express wagons, and carts (except those of express companies and butchers paying a privilege tax, and except those of farmers or gardeners hauling their own produce; also except those manufacturers hauling their own manufactured articles, except dealers delivering their goods), carts or wagons hauling coal or pig-iron as a business, shall pay, when drawn by one horse, each, per annum.....	$1 00
When drawn by more than one horse, for each additional horse, each, per annum.....	1 00
Hacks, carriages, or wheeled vehicles carrying passengers, that run for profit in this State, without reference to the residence of the owners, when drawn by one or more horses, each, per annum.....	5 00
Omnibuses, and transfer wagons, each, per annum ...	10 00

Hacks, or other vehicles carrying express matter of any character or value, in addition to the above, shall pay a tax of $10 per annum in each county through which they may run.

WAREHOUSEMEN.

Not paying a tax as commission merchants, each, per annum.....	$50 00

And this shall be instead of and cover all taxes for the selling of produce or other articles stored in their warehouses by such warehousemen, but this shall not be so construed to exempt commission merchants from taxation as provided by law; *Provided*, The tax herein levied on such warehousemen shall apply only to those carrrying on business in an incorporated city or town, or a taxing district, provided no tax shall be demanded of warehouses not charging storage.

SEC. 5. *Be it further enacted*, That the following corporations shall pay directly to the Comptroller's office the following taxes, and for the faithful collection of same the Comptroller is hereby required to enter into an additional bond in the penal sum of $100,000, and shall be entitled to a compensation of one and

one-half per cent., to be retained out of such collections, provided no commissions for said collections are allowed other collectors or attorneys:

EXPRESS COMPANIES.

(In lieu of all other taxes except *ad valorem* tax.)

If the lines are less than 100 miles long, per annum, $1,000 00
If the lines are over 100 miles long, per annum..... 3,000 00

The above tax only applies to express companies running or doing business on cars or boats, etc.

RAILROAD COMPANIES.

(Taxed according to statute.)

SLEEPING-CAR COMPANIES.

Each company doing business in the State, on each car, per annum..... .... $500 00

TELEGRAPH COMPANIES.

(Taxed according to statute.)

SEC. 6. *Be it further enacted*, That all insurance companies shall pay directly to the Insurance Commissioner the following taxes in lieu of all other taxes:

Life (foreign), 2½ per cent. on gross premium receipts, payable semi-annually.

Fire (foreign), 2½ per cent. on gross premium receipts, payable semi-annually.

Home fire and life, 1½ per cent. on gross premium receipts, payable semi-annually.

SEC. 7. *Be it further enacted*, That the income derived from all shares of stock in any corporation which are by their charters exempt from an *ad valorem* tax, or from bonds exempt from any such tax, shall pay a tax of five per cent. per annum upon the amount of such income.

SEC. 8. *Be it further enacted*, That any and all parties, firms, or corporations exercising any of the foregoing privileges must pay the tax as set forth in this Act for the exercise of said privilege, whether they make a business of it or not; and this Act shall not be so construed as to exempt any person, firm, or corporation whatever exercising any of the foregoing privileges from the payment of the tax herein prescribed for the exercise

of said privilege, except as herein provided; and it is hereby declared a misdemeanor for exercising any of the foregoing privileges without first paying the tax prescribed for the exercise of said privilege; and all parties so offending shall be liable for a fine of not less than fifty nor more than five hundred dollars.

SEC. 9. *Be it further enacted*, That all laws, or parts of laws, in conflict with this Act be, and the same are hereby, repealed, and that this Act take effect from and after its passage, the public welfare requiring it.

Passed March 26th, 1887.

Z. W. EWING,
Speaker of the Senate.
W. L. CLAPP,
Speaker of the House of Representatives.

Approved March 29th, 1887.

ROBT. L. TAYLOR,
Governor.

[Acts 1873].

CHAPTER 44.

AN ACT to facilitate the Collection of Revenue.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That in all cases in which an officer charged by law with the collection of revenue due the State, shall institute any proceeding or take any steps for the collection of the same, alleged or claimed to be due by said officer from any citizens, the party against whom the proceeding or step is taken shall, if he conceives the same to be unjust or illegal, or against any statute or clause of the Constitution of the State, pay the same under protest, and upon his making such payment the officer or Collector shall pay such revenue into the State Treasury, giving notice at the time of payment to the Comptroller that the same was paid under protest; and the party paying said revenue

may, at any time within thirty days after making said payment, and not longer thereafter, sue the said officer having collected said sum, for the recovery thereof, and the same may be tried in any Court having jurisdiction of the amount and parties, and if it be determined that the same was wrongfully collected as not being due from the said party to the State for any reason going to the merits of the same, then the Court trying the case may certify of record that the same was wrongfully paid, and ought to be refunded, and thereupon the Comptroller shall issue his warrant for the same, which shall be paid in preference to other claims on the Treasury.

SEC. 2. *Be it further enacted*, That there shall be no other remedy in any case of the collection of revenue, or attempt to collect revenue illegally, or attempt to collect revenue in funds only receivable by said officer under the law, the same being other or different funds than such as the tax-payer may tender or claim the right to pay, than that above provided, and no writ for the prevention of the collection of any revenue claimed, or to hinder and delay the collection of the same, shall in anywise issue, either injunction, supersedeas, prohibition, or any other writ or process whatever, but in all cases in which for any reason any person shall claim that the tax so collected was wrongfully or illegally collected, the remedy for said party shall be as above provided, and in no other manner.

SEC. 3. *Be it further enacted*, That in all such cases, if the Court shall certify of record in the cause that it appears from the evidence before the Court that the officer against whom said suit is brought has acted in good faith, and has defended said suit with proper diligence and care, the necessary cost of said cause shall be taxed as now provided by law in criminal causes, and be paid by the State.

SEC. 4. *Be it further enacted*, That in all cases where suits, or actions of any kind, are brought against any person charged by law with the collection of revenue, for the recovery of the tax paid as hereinbefore provided, it shall be the duty of the District Attorney-general for the District or Circuit in which the suit shall be brought to attend to the same, and conduct the defense thereof. And in the event the defense is successfully

made, the said Attorney-general shall be entitled to a tax fee of ten dollars ($10), to be taxed to and be paid by the party having brought the action against said officer, but if the Court hearing the cause shall be of opinion, and so determine and adjudge, that the act of the officer was not in good faith, or shall fail to certify, the officer shall pay costs, and shall also pay a tax fee of ten dollars to the Attorney-general.

SEC. 5. *Be it further enacted*, That nothing in this Act shall be so construed or have the effect to subject any officer of the State to any suit for a refusal on his part to accept in payment of revenue to the State any kind or description of funds, or securities or papers other than such as he may be authorized and required to receive for the time being by law.

SEC. 6. *Be it further enacted*, That this Act shall take effect from and after its passage, the public welfare requiring it.

Passed March 20, 1873.

W. S. McGAUGHEY,
Speaker of the House of Representatives.
A. T. LACEY,
Speaker of the Senate.

Approved March 21, 1873.

JOHN C. BROWN,
Governor.

Office Supreme Court U. S.
FILED,
MAR 2 1891
JAMES H. McKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1890.

No. 1381.

J. W. ALLEN, Comptroller of the State of Tennessee,

Appellant,

vs.

PULLMAN'S PALACE CAR COMPANY,

Appellee.

BRIEF FOR APPELLEE.

EDWARD S. ISHAM,
JOHN S. RUNNELLS,
OF COUNSEL.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1890.

No. 1381.

J. W. ALLEN, Comptroller of the State of Tennessee,

Appellant,

vs.

PULLMAN'S PALACE CAR COMPANY,

Appellee.

BRIEF FOR APPELLEE.

The present case, like that of *Tennessee* v. *The Pullman Southern Car Company*, 117 U. S., 51, exhibits an attempt of the state of Tennessee to raise a revenue for the state out of the inter-state transportation service of the defendant. It was there attempted under the form of a tax upon what was *declared* to be a *privilege*, conferred by the state of Tennessee, to do business in the state. The same case presented also an instance of the unqualified acquiescence by the defendant in the tax, so far as it was confined to certain cars "which ran wholly within Tennessee;" for that tax was paid and no appeal was taken from so much of the decree, though the *entire act* was believed and was held here to be unconstitutional. This case ex-

hibits a renewed effort to do precisely what was precluded by this court in the former case and in the case of *Pickard, Comptroller*, against the same defendant, *ib.*, p. 34. We have here the same provisions of the state constitution; the same legislative declaration that "doing business in the state" by sleeping car companies is a "*privilege*;" the same general and undiscriminating imposition of a fixed sum per annum upon each car used; the same comprehensive prohibition upon "doing business in the state" until the tax shall have been paid; analogous provisions for enforcing the law and penalties for its infraction.

The principal difference lies in the fact that the annual imposition of $50 per car under the acts of 1877 and 1879 and of $75 per car under the act of 1881 is increased by the act of 1887 to the sum of $500 on *each car doing business in the state.*

This case, number 1381, has elements in which it is similar to the one following it on the docket, number 1382, but in other elements they differ, so that they must in argument be considered separately.

By the general revenue act of the state of Tennessee for 1887 it is provided as follows:

"That the rate of taxation on the following *privileges* shall be as follows:

"Sleeping cars—Each company doing business in the state on each car per annum, $500."

To these clauses may be added the following, which was not in former statutes, and is deemed by the counsel for the state to be significant and important. (*Appellant's brief, pp.* 21, 22, 30, 31.) The italicized words indicate the phrases thus deemed important.

"SEC. 8. *Be it further enacted*, That any and all parties, firms or corporations exercising any of the foregoing privileges *must pay the tax* as set forth in this act for the exercise of such privilege, *whether they make a business of it or not.*"

The business of a sleeping car company in the state of Tennessee of course takes on two forms. Upon the lines of through travel across this narrow state some local business is incidentally done in the carriage of passengers between points within that state, but the amount of that is very small. A very few cars have also been run upon a route between Memphis and Nashville, which is wholly within the state. There is therefore involved here now, *first*, the power of the state to impose a tax at all upon the cars that are run across the state in an inter-state service, although some local business is incidentally done upon them, and *second*, the validity under the exactions of the present statute of the tax imposed upon the cars run locally.

Constituting the service of sleeping cars "doing business in the state" we have then in fact:

An absolutely inter-state transportation of passengers on through cars run over long lines;

An incidental and occasional transportation by these same cars of passengers between points within the state;

A carriage of passengers upon a small number of cars on a local line between Nashville and Memphis.

The act imposing the tax, however, makes no such qualification or discrimination in the service; it takes no account of differences in the kind of passengers taken by any

cars or any company. The terms of the act are general and universal. The tax is exacted of "Each company doing business in the state, on each car, per annum, five hundred dollars." The act makes no provision for the separation of one form of business from another; it calls for no reports or discovery by the companies of the amount of transportation within the state or of the service of cars on any local line. By *all cars used* the company is doing business in the state, and the imposition is absolute and peremptory of $500 on each and every car that is used in the business.

The right to do the business of inter-state transportation within or across the state of Tennessee is no privilege conferred by that state. The sovereignty of the state extends to every right which exists by its own authority, *Trans. Co.* v. *Wheeling*, 99 U. S., 279, but it halts when that right is one derived from another source, and is one which the state has no right or power to prevent. Its own declaration is powerless to make that a privilege which otherwise is not so. *People* v. *Comp. Gen. Trans.*, 107 U. S., 63; *Tennessee* v. *Pullman, etc., Co.*, 117 U. S., 52; *Pickard* v. *Same, ib.*, 34. "Transportation is * * * commerce itself; "and every obstacle to it, or burden laid upon it by leg- "islative authority, is regulation." *Railroad Company* v. *Husen*, 95 U. S., 470. A privilege tax is a license tax, it being unlawful to do the thing without paying the tax. *Pickard* v. *Pullman, etc., Co., supra*, 44, and "the exaction "of a license tax as a condition of doing any particular "business is a tax on the occupation; and a tax on the "occupation of doing a business is surely a tax on the "business." *Leloup* v. *Mobile*, 127 U. S., 645. The doing the business is subjected to a condition, and no

condition whatever can be lawfully imposed, for that subjects the business to regulation, and even destruction by the state. This is a simple statement of what this court has declared again and again; and if the cases of *Leloup* v. *Mobile* and *Pickard* v. *The Pullman Company* are not to be overruled they seem conclusive upon this issue.

In the present case the tax is general; it is laid on the entire business done, inter-state or otherwise, for it places under a condition each particular car doing business in the state even occasionally. This scope of the statute is not limited by the qualifying suggestion of counsel (*Brief*, p. 5) that no tax is claimed for the cars "employed in purely inter-state commerce." If there were any such cars no exemption of them could be found in the terms or natural operation of the law. But there are no such; and the claim of counsel for the state is express that the law applies to all cars which, though always running on inter-state lines, carry passengers incidentally between points within the state. In the second assignment of error (*Brief*, pp. 8 and 9) counsel says:

> "The court should have held that appellee was liable under the statute, to pay the tax upon all cars that were employed to any extent, whether exclusively or otherwise, and in the transportation of persons from one point to another wholly within the state of Tennessee."

But all the inter-state cars are at one time or another so employed, and are thus brought within the act, even if the qualification of counsel be allowed. In this, its mildest form, this statute imposes a condition upon the doing of an inter-state business upon these cars, namely that the tax upon them for interior business done casually and

incidentally be first paid. We need not question here at all that a proper tax may be laid upon that interior commerce; but the state must find some other way, as it easily may do if that interior commerce be the only intended subject of taxation, of ascertaining the amount of it and of enforcing the tax imposed.

But no such qualification can be imported into the statute. Exactly as in the case of *Leloup* v. *Mobile*, this statute imposes in terms a general license tax which is *a condition of doing business in the state*. Referring to that case this court, in *Telegraph Co.* v. *Alabama*, 132 U. S., 477, said: "This court held * * * that a general "license tax on the telegraph company affected its en- "tire business, inter-state as well as domestic and in- "ternal, and was unconstitutional."

The reasonable and natural effect of a statute must determine its purpose and must be taken to indicate the intent with which it was passed. *Railroad Company* v. *Husen*, 95 U. S., 472.

In *Lyng* v. *Michigan*, 135 U. S., 166, this court said:

"We have repeatedly held that no state has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or *on the occupation or business of carrying it on*, for the reason that such taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to Congress. *Leloup* v. *Mobile*, 127 U. S., 640, 648, and cases cited."

We have thus considered the subject-matter of the *second* assignment of error, which was that the court should have held the appellee liable to pay the tax upon all cars employed to any extent, whether exclusively or otherwise, in the transportation of persons from one point to another within the state of Tennessee.

We have now to consider the *first* assignment of error, which is, that this Tennessee statute ought not to have been held to embrace, and to impose a burden upon, inter-state commerce at all. It is contended that the court should have determined in construction that the statute related only to such internal transportion as was begun, conducted and ended within the state.

It is further contended that the court below, having construed the statute to affect the entire business of the appellee, inter-state as well as internal, should have held distinct and separable the two forms of transportation and should have held the statute valid as to the latter.

As to the proposition that the statute should be so considered as to confine the legislative intent to internal business exclusively, we submit that the terms of the statute are not susceptible of any such construction. It is admitted that the state court has never so considered this statute. Counsel might also, it seems to us, have admitted that the state court has, in fact, held it not to be thus confined, for there is no difference between this statute and that of 1877, which the chancery court of Tennessee passed upon in *Pullman Co.* v. *Gaines*, 3 Tenn. Ch., 587, in a ruling which was considered by this court in the *Pickard* case, 117 U. S., p. 51.

It is a license tax, a general condition upon doing

business at all in the state. It is not measured by amount of business nor by earnings, nor by number of passengers. It is not a tax upon the company doing the business. It is laid on the cars. Ever since the case of *Brown* v. *Maryland*, 12 Wheat., 419, this court has applied the rule that " where the burden of a tax falls on " a thing which is a subject of taxation, the tax is to be " considered as laid on on the thing rather than on him " who is charged with the duty of paying it into the " treasury." *Telegraph Co.* v. *Texas*, 105 U. S., 465. The tax is laid on the cars, and upon all the cars doing business in the state. As in *Telegraph Company* v. *Alabama*, 132 U. S., 477, it is a general license tax which " affects " the entire business, inter-state, as well as domestic and internal," and it is an entirety and cannot be otherwise considered.

We intend no suggestion that the local business done on inter-state cars is not a proper subject of taxation. Where, as in *Ratterman* v. *The Telegraph Company*, 127 U. S., 424, and *Telegraph Company* v. *Alabama*, 132 U. S., 477, the record of the case presents these forms of business already separated, or presents the means by which the separation may readily be made, and where the act imposing the tax furnishes a basis for the apportionment and collection of the tax upon the commerce wholly internal, the proceedings suggested by this assignment of error may be feasible, but in the present case there is no separation of the internal from the inter-state commerce presented by the record, nor does the act by which the tax is imposed contemplate any such separation.

The Act has no provision indicating that the state contemplated or intended or was otherwise than indif-

ferent to any ascertainment and separation of the internal business of the appellee for taxation. There is nothing to indicate that if the appellee itself had separated it, and offered to pay a tax on its inter-state business, they would not have refused to accept it, as was done in the case of the *Telegraph Company* v. *Alabama, supra*. Moreover, if this act should be held applicable to the business of the appellee done locally within the state, and valid when so applied, how under this act could a tax be defined and paid on that business? As has been stated, the tax is not measured by the amount of the business, but by the number of the cars. What tax should be paid, and on how many cars? With the possible exception of the small number of cars running between Memphis and Nashville, the through cars, a very great number of them, all running on inter-state lines exclusively, do now and then a local business incidentally in the transportation of passengers between points within the state of Tennessee. The total amount of this interior business is insignificant; but the tax imposed by this act if enforced upon all these cars would be destructive of all the business. The railway companies are compelled to transport and furnish their facilities for travel to all who apply, and the sleeping car companies are compelled to furnish their accommodations to the passengers of the railway company. It is not practicable to avoid this local business on through trains. The local travel is insignificant. The railways would not haul separate cars for it, nor would it be worth its cost to them or the appellee. How, under this act, can the taxation it provides for be apportioned? It is obvious that it was not the intent of the act that such separation or apportionment

should be made. It has made no provision therefor. It was not possible for the court to hold otherwise than as was held by this court in *Pickard* v. *State of Tennessee*, and in *Leloup* v. *Mobile*. It would be easy enough for the state of Tennessee, seeking in good faith to impose taxation only upon the internal service of the appellee, and not seeking by indirect methods to raise revenue for the state by a burden imposed upon inter-state service, to frame her laws so as to accomplish that purpose. The entire internal business in the state is so small that it would never of itself alone arouse such activity and persistence on the part of the state. The present law comes directly within the observations of this court in the case of *Leloup* v. *Mobile*. 127 U. S., 647, as follows:

> "But it is urged that a portion of the telegraph company's business is internal to the state of Alabama, and therefore taxable by the state. *But that fact does not remove the difficulty.* The tax affects the whole business without discrimination. There are sufficient modes in which the internal business, if not already taxed in some other way, may be subjected to taxation, without the imposition of a tax which covers the entire operations of the company."

The act cannot be confined in construction to internal transportation alone, nor upon this record and under this statute can any separation of the inter-state and the domestic transportation be made for the purpose of taxation.

In regard to the few cars run between Memphis and Nashville we have made no question that the local transportation is a proper subject of reasonable taxation when the state deals with it by itself in good faith.

The objection now made is to the exaction under this particular section.

There were two of these cars. The earlier statutes imposed a license fee of $50 and afterwards of $75 per annum. This tax was paid on these cars as is shown in *Pullman Company* v. *Nolan*, 22 Fed. Rep., 278, and in *Pickard* v. *Pullman Company*, 117 U. S., 34. After it was held in this court in 1886 that the statutes imposing those license fees were void and that the cars running inter-state were not subject to taxation, the new statutes in question in this case raised the exaction to $500 per car. During a considerable time the run of these two cars remained unchanged. Then their route was changed, one car being run from Memphis to Louisville, and the other from Memphis to Atlanta, running in one night from Memphis to Nashville, lying over during the day because the railroad companies would not haul them on their day trains, and proceeding at night to complete their route. This change involved the placing of four cars instead of two upon this run. Very vigorously and very often in the brief for appellant this change of the route of these cars is charged to be an attempted evasion of the taxing statute. It is sufficient to say that the question of liability must always remain with the court, not to be evaded if the tax is just; and that if it were true that the route was changed to avoid taxation, still it was lawful to change the route, and there could be no other evasion sought than that of the extraordinary imposition made by the present statute. These cars run regularly from Memphis through Nashville, to Louisville, Kentucky, and from Memphis, through Nashville, to Chattanooga and Atlanta, running into Alabama and Georgia before reach-

ing Chattanooga and then on to Atlanta. Under the existing statute the exaction attempted for the privilege of local transportation in Tennessee is out of all proportion to the revenue that can be earned in that service. If the statute can be enforced upon these few cars, and upon the occasional extra cars, making one trip, which is what is claimed by appellant (*Brief*, p. 21, 30), the state would raise upon them a revenue equal to what it would have received from the interstate cars under the statute held to be void in the *Pickard* and *Tennessee* cases. It would thus make itself good for the loss of revenue in its failure to impose taxation upon the interstate cars. Counsel expressly asserts the right, and almost declares the intent of the state to do this, and insists that the execution of the purpose is beyond the interference of the federal courts. (*Brief*, p. 47.) The state would have little ground to complain, if it were true, that such an attempt to evade the decisions of this court above cited were met by a change of route of cars which had before run locally. It is well settled that this court will inquire into the good faith of a state in its taxing laws in their relation to a constitutional prohibition. In *Morgan* v. *Louisiana*, the court said: "In all cases of this kind "it has been repeatedly held that, when the question is "raised whether the state statute is a just exercise of "state power or is intended by roundabout means to in-"vade the domain of federal authority, this court will "look into the operation and effect of the statute to "discern its purpose." See *Henderson* v. *Mayor of New York*, 92 U. S., 259; *Cly Lung* v. *Freeman*, 92 U. S., 275; *Cannon* v. *New Orleans*, 20 Wall., 587. And it is laid down that "in whatever language a statute may be "framed, its purpose must be determined by its natural

"and reasonable effect." *Railroad Co.* v. *Husen*, supra. But apart from these suggestions, we submit that the statute is void, as being a general license law *upon all* the business of the appellee, and that in its present form it cannot be made available for any purpose. As we have said before, the state of Tennessee, when it seeks in good faith to raise a reasonable revenue from the business of the appellee over which its power may lawfully be exercised, will have no difficulty in framing its laws so as to accomplish that end, and, we venture to believe, little difficulty in collecting the revenue.

The objection that the tax should have been first paid in obedience to a statute of the state of Tennessee, and then suit brought to recover the money the payment of which had been unlawfully coerced, is without foundation. It is sufficiently disposed of in the case of *Poindexter* v. *Greenhow*, 114 U. S., 270. It has been passed upon as to this particular statute in *United States Exp. Co.* v. *Allen*, 39 Fed. Rep., 713. If the statute imposing the tax is void, it conferred no right upon the state and imposed no duty upon the appellee.

EDWARD S. ISHAM,
JOHN S. RUNNELLS,
Of Counsel for the Appellee.

Office Supreme Court U. S.
FILED,
MAR 2 1891
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1890.

No. 1382.

J. W. ALLEN, Comptroller of the State of Tennessee,

Appellant,

vs.

PULLMAN'S PALACE CAR COMPANY,

Appellee.

BRIEF FOR APPELLEE.

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Appellant,

vs.

PULLMAN'S PALACE CAR COMPANY,

Appellee.

BRIEF FOR APPELLEE.

The revenue act of the state of Tennessee for the year 1889, provided as follows:

Sec. 4. *Be it further enacted*, That the rate of taxation on the following privileges shall be as follows (per annum):

* * * * *

Sec. 5. *Be it further enacted*, That the following corporations shall pay directly to the comptroller's office the following taxes:

* * * * *

SLEEPING CAR COMPANIES.

(In lieu of all other taxes except *ad valorem* tax.)

Each company doing business in this state, for one or more passengers taken up at one point in this state and delivered at another point in this state, and transported wholly within this state, per annum, $3,000.

"SEC. 8. *Be it further enacted*, That any and all parties, firms or corporations exercising any of the foregoing privileges *must pay the tax* as set forth in this act for the exercise of such privileges, *whether they make a business of it or not.*"

For the enforcement of this tax in this case the comptroller of the state issued his warrant for the tax which was levied upon the sleeping car Wetumpka, a car running in an inter-state service and the property of the appellee. The sheriff had possession of this car and had advertised it for sale. Upon a bill filed by the appellee the court below enjoined the enforcement of the statute and this appeal has been brought from that decree.

As in the case last argued, No. 1381, so in the case now at bar, we have to say that it illustrates the persistent effort of the state of Tennessee to raise revenue for the state from the inter-state transportation service of the appellee.

The modification made in the phraseology of the statute is a manifest attempt to change its form without changing its operation and effect. The tax imposed will raise a revenue for the state just about equal to what it would receive under the statute held void by this court in *Pickard, Comptroller*, v. *Pullman Company*, and in *Tennessee* v. *Pullman Company*, 117 U. S. The total local service in Tennessee is so insignificant compared with the amount of the tax imposed that it is plain that the state had in view not that local service, but the entire service, inter-state as well as domestic, and *intended that the burden of the tax should fall upon the inter-state service.* This precise question under the same statute of Tennessee was considered in the case of *United States Exp. Co.* v. *Allen*, 39 Fed. Rep.

715, and the judgment in that case was precisely in accord with that of the circuit court in this case below. The appellee avers that the comptroller, for the enforcement of this tax, has seized upon a sleeping-car called "Wetumpka," and now holds the same in his possession for sale; that this car when seized was in use in an inter-state transportation service, and as an instrument of inter-state commerce, and was in Tennessee only by virtue of such use. The statute is a manifest attempt to collect from a few cars the same amount of revenue that under former statutes it had sought to collect from many, and counsel for appellant insists upon the right of the state to do this. He insists that it is no ground of objection that the legislature *intended* to compensate for the loss of its former claim to tax inter-state business by laying a heavier burden upon the internal business. The fact is, there practically is no internal business, and the burden falls, as was intended, upon the inter-state service. He says that the loss of revenue in one direction must be compensated in some other, and it is plain to see that this tax has no real relation to the internal business, but is intended to be a burden imposed upon, and a revenue raised from, the inter-state transportation of the appellee.

We refer to and submit further in this case the observations that are contained in our brief in the preceding case, No. 1381.

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